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GOVERNMENT IN THE  
THIRD REICH







# GOVERNMENT IN THE THIRD REICH

BY  
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WITH A FOREWORD BY  
W. Y. ELLIOTT

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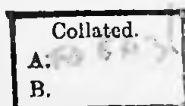


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## FOREWORD

The great merit of Dr. Marx's study of *Government in the Third Reich* is the thorough understanding of the whole background of National Socialism which he brings to his treatment. As a scholar and civil servant in Germany, who had already established his right to speak with authority, and from firsthand experience as a student and teacher in several American universities, Dr. Marx is uniquely qualified to interpret contemporary Germany to American students.

But his book seems to me striking from several aspects that go beyond the thoroughness with which he has treated the subject in so few pages. There is about it an essential balance which weighs all the elements of the political problem in Germany with a just hand. The moving stream of history too often seems to bear on its surface the present as an inevitable result. Dr. Marx's study shows with rare objectivity how much of determinism and how much of moral purpose, both in success and in failure, have gone into the making of National Socialism.

There has been, I daresay, no more convincing study in equal compass of the full pattern of a modern dictatorship. He has given to the economic and cultural elements the consideration that they demand by weighing the part of such intangible elements as social mythology and propaganda technique. Step by step he has traced the evolution of National Socialism to the present type of Führerstaat. No one would be better able than a former civil servant of the City-state of Hamburg to estimate the effect of National Socialism on the traditions of German bureaucracy and local government. With an equally keen insight he has sketched the real relations between the new corporative state and the economic "powers that be" in Germany.

The books written by Germans who live outside Germany today run some risk of being considered the products of an emigré psychology. It is a great virtue of Dr. Marx's study that he lets National Socialism in Germany speak for the most part for itself. He has made available in this little book a veritable



storehouse of German sources not previously accessible to the great body of American students. The book does not pretend to that "objectivity" which consists primarily in pure description and the avoidance of all moral judgments, but it has the unmistakable mark of true scholarship in its willingness to understand before it judges. It seems to me far and away the best study of German political life under the Third Reich that has yet been offered to students.

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In revising the manuscript for publication I have greatly benefited from the helpful collaboration of three of my Harvard students, Mr. Benjamin S. Asia, '36, Mr. Richard T. Davis, '38, and Mr. James L. Kunen, '36.

F. M. M.

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## INTRODUCTION

The generous attention which Germany has received on the front pages of newspapers throughout the world since the National Revolution of 1933 is in itself adequate evidence of the significance attributed everywhere to Hitler's rise to power. It would be an understatement of the first order to characterize this event merely by saying that political control changed hands. Landslides are a regular feature of democratic evolution, particularly in times of social transformation and economic stress. In England, for instance, the Labor Party has twice since the World War succeeded in seizing the reins of government, only to experience defeat at the polls each time in the subsequent national elections. To the conscientious observer of foreign affairs, however, these thoroughgoing shifts of public sentiment had but negligible repercussions on the general framework of Great Britain's parliamentary institutions and her traditional policies, domestic and international.

The remarkable measure of continuity in the major lines of orientation displayed by British cabinets of entirely different party composition needs no elaborate explanation. In the first place, the political tenets of the Labor Party are tempered by its sense of reality and its preference for practical accomplishments rather than for orthodox Socialism. Its aim is reform, not revolution; it therefore looks upon democracy as an ally instead of an opponent. Secondly, its aging leaders, brought up in the spirit of reasonable compromise and gradual adjustment, were instinctively disinclined to engage in bold experiments. Consciously or unconsciously, the Labor leaders placed greater emphasis on conforming to established standards and proving themselves worthy of the confidence of the Crown. True to





the principles of parliamentary government, they regarded their ministerial office as a temporary mandate, which might at any time land them on the opposition benches whence they had come. As a consequence, the two Labor cabinets did not fail to pass the test of governmental respectability. But their deeds rarely burst into headlines.

*National Socialism "Perturbs the World"*

What made Hitler's appointment as chancellor of the German Reich infinitely more news-worthy than had been the swing of the pendulum of politics in Great Britain was not merely the fact that prevailing world opinion regarded the leader of the National Socialist Party as nothing but a perfect fool. Far heavier weighed this fool's avowed determination to blast asunder the republican form of government adopted in 1919 and to tear up the Treaty of Versailles.

Some years ago, in England, the curtain went down on a political organization advertised as the British Fascists when the public came to associate their initials with a less dignified combination of words—Bloody Fools. The new Reich chancellor suffered no serious handicap from being similarly exposed to ridicule. A devout admirer of Wagner's music, he may have found consolation in the fact that the hero of his favorite's opera *Parsifal* passed through his mythological career as the "guileless fool." Moreover, too cheap labels do not stick. Before the Franco-German War of 1870-1871 Napoleon III, while promenading on the beach walk in Biarritz, had pointed out to his entourage another visitor as a *fou furieux*. The man referred to was Otto von Bismarck, later Germany's Iron Chancellor. When after the battle of Sedan the Emperor of France found himself confined at the castle of Wilhelmshöhe as a prisoner of war he had ample reason for reconsideration.

Today the Third Reich's helmsman no longer figures in most people's minds as a perfect fool but rather as a perfect villain. Even his irreconcilable foes are now ready to credit him with ingenuity, if only that of a sadist; with shrewdness, if only that of a reckless gambler; with consistency, if only that of a fanatic; and with resourcefulness, if only that of a demagogic spellbinder. No one is still in the mood to laugh off "Aryanism" as nothing but an odd idea. No one clings any longer to the illusion that



Hitler's war cry against Marxism was merely good campaign technique. But the plight of the German Jews and the ruthless destruction of the existing labor unions are overshadowed by another challenge: the establishment, in the "heart of Europe," of a political order modeled on the military pattern of command and obedience, dedicated to the task of achieving arms equality for Germany with or without the consent of those powers which, in 1919, imposed one-sided disarmament on a vanquished nation.

The clear-cut nature of this challenge is universally recognized. National Socialist statecraft, too, is well aware of it. Professor Friedrich Schönmann, of the University of Berlin, adroitly stated the situation in an address delivered in 1934 before the German Academy of Politics. "We Germans of today," he observed, "we National Socialists, perturb the world with what we desire, what we are, and what we plan, much more than Italian Fascism has ever done."

### *The Issue of Equality*

In the swift succession of momentous events which have marked the last two decades, it is worth recalling that arms equality for Germany as a political issue was not first presented to the world by the Third Reich. The Treaty of Versailles gave moral justification to its provisions on German disarmament by explicitly adding that the scrapping of the Reich's war machinery was meant to be the initial step toward general disarmament. It is obvious that if disarmament in principle is a blessing, it is a curse for a single nation surrounded by armed neighbors. That was precisely the situation in which the German people found itself. Sensitive to the humiliations of the "peace of shame," it concluded that the reluctant attitude toward universal arms restriction manifested by its former war enemies proved either their bad faith or their ill will. In claiming arms equality, the republican government made itself the advocate of the cause of international solidarity as well as the mouthpiece of domestic public opinion regardless of political creed and party affiliation. Otherwise divided, the electorate was solidly united in its demand for the same measure of national security which other countries deemed proper for themselves.

In simplest terms, the argument for German arms equality left nothing to be desired in conclusiveness. Either the program-



matic goal incorporated in the Treaty of Versailles, general reduction of military establishments, still prevailed—in that case Germany, having fulfilled her part of the bargain, could expect the other signatory powers to follow suit; or the objective of general disarmament had been abandoned—then the Reich would have the best of reasons for considering itself free from the military clauses of the Treaty, as the other signatory powers were no longer willing to carry out their part of the bargain. General disarmament, it was submitted, would have resulted in arms equality for all, and hence for Germany, too—whatever concrete criterion of equality might be chosen. But to insist upon the necessity of prewar preparedness for oneself and to deny the Reich identical safeguards was an untenable position in the eyes of the German people.

Perhaps the most articulate presentation of this view was brought forth at the Twelfth Assembly of the League of Nations, in 1931, by Dr. Julius Curtius, friend of the late "great peace man" Gustav Stresemann and his successor as head of the German Foreign Office. "The League of Nations," Minister Curtius emphasized, "has to bear the whole responsibility for the treatment of the disarmament question. The fate of the League is tied up with the solution of this problem. The community of nations organized in the League is distinguished from former international coalitions by its common conviction that security cannot lie in armaments, but is to be brought about through disarmament. Security, however, is a guaranty of self-preservation only in so far as all nations share it equally. The Covenant does not recognize any disparity in the treatment of League members. Security founded on superiority of armaments implies insecurity and danger to other countries less heavily armed. Germans know from their experience at home how the consciousness of being without military protection against heavily armed neighbor countries besets the soul of a nation and affects every phase of its existence. The obligations which Germany took upon herself in 1919, had as corollary the binding pledge that Germany's disarmament should pave the road to general disarmament of the other signatory powers. Twelve years have passed since the promise was given, and Germany has been a member of the League for five years, yet the pledge has not been redeemed. At the forthcoming Dis-



armament Conference the German people cannot be asked to consent to a scheme which would simply affirm the existing ratio of armaments. If we wish the result of the Conference to be acceptable on political grounds, the Conference must see to it that in future there will be no longer a dual law in the matter of armaments, one for the victors of the World War and one for the other countries. The method of reduction and restriction of the different kinds of armaments must be one and the same for all."<sup>1</sup>

### *The Plea for Revision*

It is this line of reasoning which the German republic has pursued ever since the Treaty of Versailles was signed. Relegated to the role of the eternal petitioner for relief, the Reich became the natural protagonist of revision. To be sure, the revisionist argument ran counter to the idea of preserving at any price the military *status quo* established by the Peace Conference in 1919. But it cannot be overlooked that the plea for revision was essentially a call for an international settlement of the disarmament question in the spirit of justice and joint responsibility; that it disavowed by implication one-sided repudiation of existing obligations; and that it took for its point of departure a consideration embodied in the very document which "replaced" the World War "by a firm, just, and durable peace." The way in which Minister Curtius, and others before him, put the issue of equality demonstrated the republic's intention to abide by the letter of the Treaty although it was considered null and void by many a German authority on international law—null and void because the final text as handed across the barbed wire behind which the German Peace Delegation was kept in political quarantine failed to honor the express assurance, given in the armistice pact, of a peace in accordance with Woodrow Wilson's Fourteen Points; null and void also because Germany submitted to the Treaty only at the point of the sword.

As the issue of German arms equality had two sides, adjustment could be sought within the bounds of an alternative, depending not on Germany's free choice but on the League's policy. The alternative was international cooperation or self-help. Minister Curtius, in full accord with the republic's traditional stand, pressed the case for concerted action, for general



disarmament. There was still a shadow of hope that his words were not wasted. But the arms issue kept the League in a tight corner. Throughout the postwar period France had continued to watch her eastern neighbor with but temporarily allayed suspicion. The lesson of 1914 was not forgotten. Consequently, the most important *status quo* power in the League's councils continued to squat on whatever title it had to the perpetuation of arms inequality. Indeed, from a narrow point of view Germany's military insecurity seemed to offer the best guaranty of French military security.

Here was a cleavage of fundamental interests which could have been bridged over by mutual faith alone. France's fear of a recurrence of historical precedents and German apprehension of isolation amidst a new system of European alliances were, however, anything but conducive to an atmosphere of open-minded understanding. These psychological conditions were to thwart any arrangement which might have satisfied both nations in the light of a realistic appraisal of true reconciliation. Fright is a bad guide. Distrust negates real international solidarity. Both defeat reason. Yet tension never really eased as time went on. In fact five years after Locarno France was less disposed than ever before to lend an ear to her neighbor's pleading. For in the national elections of September, 1930, Germany had treated the world to an unexpected spectacle: the National Socialist Party scored an ominous victory by increasing its parliamentary strength from 12 representatives to no less than 107, thus acquiring a position second only to the trade-union-backed Social Democrats.

#### *Stalemate and Frustration*

To France this bewildering outcome meant one thing; to the Reich cabinet headed by Dr. Heinrich Brüning, able leader of the Catholic Center Party, it meant another. French public opinion concluded that Germany was on the verge of reversing the course of patient pacific endeavor laid out by Gustav Stresemann, who, toward the end of his career, commanded the good will of more Frenchmen than had any of his predecessors in the Reich's Foreign Office. Profoundly alarmed by what seemed to prove the indisputable failure of Aristide Briand's peace policy, France turned at once toward relentlessly guarding her defenses.



Chancellor Brüning, on the other hand, took a different view. Unquestionably the heavy National Socialist vote was a distinct storm warning. But all it indicated was that the electorate had grown restive under the impact of a gradual tightening of economic conditions widely blamed on the Treaty of Versailles and that the revision deadlock was beginning to wear on the people's nerves.

If the republic's "policy of fulfillment" of Treaty obligations within the bounds of its ability was to last, the case for equality had to be brought to a satisfactory close in the near future, be it directly on the arms issue, or be it indirectly on that of economic self-determination. In 1924, the wholesome effects of the Dawes Plan—the first attempt to reconsider the problem of German war reparations in the light of reason—had checked radical opposition; in the December elections the Communist faction was trimmed from 62 to 45 representatives, the National Socialist from 32 to 14. A similar reaction would not have been out of question even at so late an hour. It was largely this consideration which led to the German-Austrian plan of a customs union, as such not prohibited by the Peace Treaty. But in 1931, when the project was officially announced, France was least prepared to experiment with readjustment. In fact, her irritation immediately reached a new peak. Throwing in her full weight in League affairs, she was able to block what she regarded as a preliminary move toward a political union of the former Central Powers. Half a year later, Chancellor Brüning was out of office, and at the next general elections in Germany the National Socialists mustered a parliamentary force of 230 representatives, now second to none.

The tragic series of errors that kept apart two great neighbor peoples, both of which had sacrificed their younger generations on the battlefields of the first World War, both longing for national security and a lasting peace, both deeply stirred by their realization of brewing danger, makes a distressing tale of human inadequacy and the psychoses of uncertainty. At the same time it forcefully drives home the truism that a peace founded on inequality and injustice carries in itself the germ of war. It cannot be repeated too often that more is needed for the elimination of armed conflict among nations than mere outlawry of the aggressor. No less essential is effective machinery for



equitable treaty revision. As yet effective machinery has not been created for such a purpose. But if continents can be redistributed by the harsh fiat of power, as was the case at the Paris Conference, then it is not an idle speculation to conceive of similar but more thoroughly considered reapportionments, reached in the light of reason and sanctioned through an international body untrammelled by national interests. That world politics seem today farther removed from this goal than at any time in the recent past does not detract from the urgency of the need for remedies. Their absence precipitated the fall of the German republic. With it, the "policy of fulfillment" went definitely into the discard. Its sole alternative is repudiation.

### *A Lost Opportunity*

In 1931 Minister Curtius pointed to the responsibility of the League of Nations for sidetracking the issue of equality. It was the outgrowth of spreading anxiety rather than mere coincidence that about the same time his appeal for joint arms reduction was seconded on this side of the Atlantic by the untiring peace campaigner Frederick J. Libby, executive secretary of the National Council for Prevention of War. What the Reich's League spokesman left unsaid Mr. Libby was quick to detect. Mused he, "Finally—how long will Germany be satisfied to remain disarmed though surrounded by European countries armed to the teeth? If it is true, one may reply, that in our day armaments are essential to national security, the German Reich in due course of time will probably raise the claim to be protected precisely the same way as are the other nations."<sup>2</sup> Less than two years later the forecast had come painfully true. But by that time the Hitler revolution was in full swing. Confusion reigned in European capitals. In vain did the austere *London Times* sound a last warning: "The sands are running out; and unless this problem of disarmament is faced now in a really bold and courageous spirit, Europe will be left to drift, nation arming against nation."<sup>3</sup> Mastery or chaos—indeed, the alternative still admitted of a League decision. Yet, a quick decision was needed, and one not conditioned upon further bartering, as Germany's stand was clear. Recapitulated the *New Republic*, between broadsides against the National Socialist regime: "The general case of Germany on armaments is irrefutable.



A peace of reconciliation requires equality of status, and consequently substantial equality of armaments. If the Allies will disarm, Germany will be content; if they will not, Germany will insist on the right to arm. The justice of this position has been acknowledged by leading British and American statesmen."<sup>4</sup>

To France, of course, the suggestion of a last-minute accord in a "really bold and courageous spirit" held about the same attraction as might an invitation to commit suicide. Had not all her efforts been directed toward preparedness? And now, when disaster drew close, could any one expect her to turn on her heel and to grant National Socialist Germany what she had persistently withheld from the republic? With Hitler's Brown Shirt battalions marching to victory, would not the immediate concession of arms equality amount to pouring oil on the flames which might leave all Europe in ashes? In the light of those fixed premises on which French postwar diplomacy had been operating, there was indeed no justification for rashly taking chances at a moment when the German sphinx seemed about to move. The new Reich, on the other hand, had no intention of courting the League or of submitting to a probationary period of good behavior. It demanded its "rightful share" without discount. The time for paper formulas and interim solutions was over. Baffled, Geneva witnessed Germany's withdrawal from Disarmament Conference and League.

The great opportunity which the postwar constellation afforded was irretrievably lost. With it the books were closed on an era of hesitant evolution which fell short of striking accomplishments. At the end, both France and Germany stood essentially where they had been in 1919: Germany resolutely aspiring to a liquidation of Versailles, France clinging to that measure of Continental hegemony which the Paris settlement had established. The emergence of the Third Reich had no influence on Germany's fundamental goal or on the way it was rationalized by the republic. But the method of pursuing the goal underwent a complete change. Whereas Stresemann had pleaded, Hitler resorted to the strategy of ultimatum. But what was more vital, the same German people which once backed the "policy of fulfillment" now stood solidly behind the new chancellor. In no other question could the Hitler cabinet claim with better right to speak for the whole nation. If anywhere, it



was here that the followers led the leader. In fact, the very character of Germany's political reorientation reflected the depth of disillusion. The alternative lines of advance which the issue of equality implied were firmly impressed on the public mind. The "policy of fulfillment" had proved a dismal disappointment. The hour of self-help struck. By treating the republic as though it were "the monstrous Germany of the chronic French nightmare," France had, in the words of a competent British observer,<sup>5</sup> conjured up the very spirit which she feared.

### *Regained "Freedom"*

The annual National Socialist Party Congress of 1935, held as usual in the castle-crowned city of Nuremberg, met under the official password of "Freedom." The freedom that 400,000 went to celebrate was not the *liberté* of the French Revolution, but the regained freedom of action, which had found visible expression in the new conscription law. Its promulgation was coupled with the candid announcement that after two busy years for the heavy industries Germany was no longer without an adequate national defense. The new freedom had less repercussion on the diplomatic situation in Europe than might have been assumed at the time of the Reich's withdrawal from the League. Far greater political significance was attached to the fact that England—between panic and realistic reflection, revision-mindedness and the good horse sense of a trader—deemed it appropriate to conclude a naval pact with the Third Reich, for the pact implicitly validated Germany's disregard of the Peace Treaty's disarmament clauses, although the scope of her naval readjustments was confined to a fixed ratio of British sea power. For the first time National Socialism's prime aim, to smash the Versailles system, received open recognition, in a formal agreement between the Cabinet of National Resurgence and the most potent of France's former allies. The ice was broken. Germany had taken her fate in her own hands.

It would be a self-deception to attribute the exuberant response of the country to "freedom" primarily to the effectiveness of National Socialist propaganda. Minister Curtius had measured his words when stressing, in 1931, the nexus between domestic politics and national insecurity—"Germans know from their experience at home how the consciousness of being without



military protection against heavily armed neighbor countries besets the soul of a nation and affects every phase of its existence." What were civil liberties without "freedom"? What was the intrinsic merit of peace without fairness, of a *status quo* which put Germany at the mercy of the League? Where had the League been when Lithuania seized Memel in January, 1923? In restoring the defensive forces to the prewar tradition of a people's army Hitler had dared to do what the statesmen of the republic considered beyond their might. He simply picked the forbidden fruit, and no archangel came to expel him. In 1933 there was still some vague talk of a preventive war to reenforce Versailles before the new Germany stood ready to defend her borders. In 1935 facts had rendered such talk utterly obsolete.

If the German mind needed a lesson in self-help, there could have been none more effective than that provided in the past two years by French and British diplomacy. During this decisive period the former allies stood far apart, as in the last analysis England thought in terms of the European future, France in terms of the European past. Baldwin's handsomely inflated reference to the Rhine as Great Britain's frontier could be read one way or another without losing its commonplace character, for in the light of a new European balance of power the existing border line would demarcate the French zone of Continental influence as it did the German. Moreover the Third Reich had not announced any intention to raise territorial claims against France. With the return of the Saar it did not hesitate solemnly to assure its western neighbor that no further territorial issue stood between them. In the meantime British and French cabinet members, when pestered with parliamentary questions on German rearmament, volunteered the information, in a noncommittal way, that they were aware of the Reich's secretive doings; that these doings could not be reconciled with existing treaty obligations; and that certain treaty provisions were designed to meet such a situation. As to immediate action, the only course available seemed to be to catch up with Germany's pace. The arms race was on.

As a consequence, the powers most directly affected by the Third Reich's "freedom" supplied National Socialism with an exquisite array of arms campaign slogans. One of the best, coming from Baldwin's own lips, was forthwith prominently



featured in the Hitler cabinet's conscription proclamation:<sup>6</sup> "A country unwilling to take the necessary precautions for its own defense will never have power in this world, either moral or material." Added the proclamation with restraint and modesty: "The government of the new German Reich, however, desires only one single moral and material power; it is the power to be capable of preserving the peace for the Reich and with it also for the whole of Europe!"

*The Price of "Freedom"*

To the average American the maze of European politics is not without a certain fascination, but it is largely the fascination of a game with incomprehensible, if not unknown, rules, and at that a game better to watch than to play. The imponderables of national prestige and national frenzy, of ecstasy and depression, of fright and conceit, the intricacies of back-stage maneuvers and wirepulling, of poker-faced hypocrisy and uncontrolled passion seem to be altogether out of proportion to the plain common-sense requirements of reasonable adjustment. Few will question the basic validity of such a criticism. Yet it does not follow that the hopeless-looking tangles of the Old World could easily be cut through with a little more good will and a little less stubbornness, perhaps by disposing altogether of the obscure craft of an overdexterous diplomacy. Legitimate though this conclusion may appear from the viewpoint of a distant observer for whom Providence has reserved a more comfortable berth, it nevertheless does not carry conviction. For it rests on the hollow premise that standards of judgment derived from historical experience on this side of the Atlantic admit of universal application. We must guard ourselves against the tempting assumption that those factors which shape national destiny and hence the means and ends of political action are essentially identical throughout the world. As a matter of fact, they are anything but the same.

In the Western Hemisphere space took care of the problems which the pressure of population caused across the sea. For generations the political primacy of the United States in American affairs has not met a serious challenge. Oceans protect its shores more dependably than navies can. The continental sweep of its governmental structure is a bulwark of unhampered organic



growth. The very size of the country insures a more generous share of natural resources than that held by any other nation. If sovereignty means the power of free decision, political, social, and economic, few countries can measure up to the actual scope of sovereignty enjoyed by the United States. If liberal institutions require liberal material endowment, the American scene offers democracy the ideal setting. As a consequence, in spite of Populist movements and the sporadic urge of Manifest Destiny to police the Carribbean and beyond, the citizen of the United States is on the whole prone to view the arena of politics, at home and abroad, with that degree of tranquil detachment, if not indifference, which one accords to side-line issues.

In Europe, on the other hand, peoples are wedged into each other on a narrow territorial basis. Century-old feuds still smolder in their national consciousnesses. The sense of restriction is acute. Conditions were aggravated through industrialization. Half of the population of the United States rounded up in an area smaller than Texas: that is present-day Germany. Beyond her borders, not fortified by nature, there is no hinterland, but competition. The people subsists no longer on agriculture; its manufacturing skill has become the prime source of national income. Raw materials, moreover, must largely be imported, and markets must be sought for gainful disposal of the manufactured goods. Before the World War the Reich's precarious situation in the center of Europe was somewhat eased through alliances. Disarmed Germany would have been a liability as an ally. "Freedom" could make her an asset. Early in 1934 Hitler surprised Geneva by concluding a non-aggression pact with Poland, thus apparently putting on ice the formidable issue of the Polish Corridor by which East Prussia is severed from the rest of the country. After "freedom," Poland would have good reason to ponder seriously the choice between Paris and Berlin.

As to the price of "freedom," few Germans were slow to see that heavy installments would fall due for years to come. "Freedom" would begin with the schools and the Hitler Youth, lead on through Storm Troop and Labor Service, rise to its highest plane under the colors, continue in semivoluntary professional organizations, permeate public opinion, transform itself into civic patterns, reshape social life, overhaul the whole structure of national



economy, affect the standard of living—in short, make National Socialism a lasting necessity.

## NOTES

1. *League of Nations, Official Journal*, Special Supplement No. 93, pp. 91 ff., 1931. The quotation given in the text is somewhat condensed, and does not always follow the official translation.
2. *Amerika-Post*, vol. 3, p. 123, 1931.
3. Sept. 28, 1933.
4. Vol. 76, no. 986, p. 293, 1933. The quotation given in the text is slightly condensed.
5. Arnold J. Toynbee, *Yale Review* (new series), vol. 23, p. 64, 1933.
6. Proclamation of Mar. 16, 1935 (*Reichsgesetzblatt* I, p. 369).



## Chapter I

### THE BACKGROUND OF GERMAN POLITICS<sup>1</sup>

#### 1. BISMARCK'S REICH—GROWTH AND DOWNFALL

Early in 1935 Professor Hermann Oncken, the distinguished historian, abruptly broke off his academic work at the University of Berlin. Provoked by semiofficial comments on the "curse of objectivity," he did what in 1794 Johann Gottlieb Fichte, in his lectures on the "destination of the scholar,"<sup>1</sup> had tried to impress upon his students at Jena when he said: "The nobler and better you are yourselves, the more painful will the experiences be which fate has in store for you. Do not let this pain overwhelm you—conquer it by deeds!" In his recent book on Cromwell, subtitled "Four Essays on National Leadership" and of necessity pregnant with unsought implications, Oncken advised the German public, well-versed in the subtle art of reading between the lines, not to draw "parallels such as are conceivable."<sup>2</sup> But while thus condemning rash comparisons as scientifically unsound, he did not hesitate to refer in the preface openly to the "most curious shifts" which German history is undergoing "today in many minds."<sup>3</sup>

#### *The New Myth of the "Soldier State"*

Evidence of these shifts Professor Oncken could have discovered in the writings of one of his own colleagues who had turned National Socialist just in the nick of time, and fared well ever since—Carl Schmitt, author (in 1931) of *The Guardian of the Constitution*,<sup>4</sup> which role he assigned to the Reich president. His latest exploit: a reinvestigation into the structure and breakdown of the prewar *Kaiserreich*.<sup>5</sup> His findings: Prussia's stars shone brightly as long as monarchy rested on the safe foundations of a "soldier state"; but about the middle of the past century the cancer of constitutional ideology and bourgeois liberalism began to eat its way into the tissues of life. His verdict: Bismarck him-



self, as Prussia's premier, blundered irreparably in 1866 when just emerging victoriously from a four-year conflict with the legislative branch over military credits; for he insisted on being explicitly exonerated for having financed the reorganization of the Prussian army without the legislature's authorization. It is true, the legislature, impressed by the success of the Danish and Austrian campaigns of 1864 and 1866, had acquiesced in the meantime. It hastened to calm Bismarck's conscience by voting him free from responsibility for his defiance of the constitution. But a dreadful precedent was set. Bourgeois liberalism had been permitted to fancy itself as the master of military policies. Then and there the "soldier state" surrendered to the forces of parliament; the gates were opened to such further destructive interferences as the Parliamentary Peace Resolution of 1917.

So far Professor Schmitt. Suffice it to say that the significance attached to the Exoneration Bill seems to depend on the point of view; in the judgment of a British Fabian, for instance, the passage of the bill "sealed the doom of German liberalism."<sup>6</sup> More to the point is probably the plain observation that the "German dream," the dream of a reborn Reich, could not have been realized without "blood and iron." Between two powerful competitors, Austria and Prussia, only the stronger was destined to leadership. A thorough house cleaning was inevitable in order to overcome the utter division of dynastic interests in Central Europe. Where romanticists had discoursed and prayed, Bismarck resorted to deed. But in spite of parliamentary dissension as to the wisest policy, the need of action was commonly recognized. How German liberalism stood on this issue after the constitutional controversy arising in 1862 had subsided, it indicated in the passage of the Exoneration Bill.

While Professor Schmitt's good intentions at least are clear when he champions the "soldier state" and decries constitutional ideology, they have obviously carried him too far. For he is completely out of line with approved thought in casting a reflection on the Iron Chancellor. National Socialism, lineage-minded, takes it for granted that Bismarck was a forerunner of the Third Reich's Leader, just as Schiller has found his proper niche as "Hitler's companion-in-arms."<sup>7</sup> Added to the list of spiritual ancestors of the "Movement" are, with occasional reservations, such worthy names as Martin Luther, Frederick the Great, and



Baron vom Stein, father of German local self-government. Less well represented are the medieval emperors whose empire stretched from Germany's northern shores to the Mediterranean—the First Reich according to a now fashionable classification inaugurated, not by National Socialism, but by a “revolutionary Conservative,” Moeller van den Bruck, who coined a new catchword in his *Das Dritte Reich*, published in 1922 (and three years afterward, unaware of Hitler's national mission, ended his life in order to escape incurable mental disease). When Bismarck's statesmanship restored German unity in 1871—in the same Hall of Mirrors where the Treaty of Versailles was to be signed less than five decades later—the Second Reich was born. The span between 1918 and the Hitler revolution is today looked upon as a vacuum: the ideological desert of Weimar democracy.

### *Prussia's Tradition of Local Self-government*

If the Exoneration Bill of 1866 really marked the capitulation of the “soldier state,” one would have to seek the immediate causes of what Professor Schmitt bemoans as its decay in a much earlier period. Seven years before Bismarck was born, Baron vom Stein's sagacity was instrumental in enacting a memorable measure of reform legislation—the Prussian Municipality Act of 1808, the *Städteordnung*. Local government had, all through the Middle Ages, never completely yielded to the aspirations of territorial rulers. The centralizing tendencies of absolutism, however, resulted in a gradual expansion of state administration into the municipal sphere. As a consequence, control fell eventually to public officials who, though on the whole responsive to the needs of the citizens, were appointed by, and responsible to, the state instead of the municipality.

Doubtless most of them were hard-working administrators, thoroughly posted on their duties. It is illustrative of the caliber of men who held municipal office toward the close of the eighteenth century that in 1798 a high Prussian career executive supplied them with technical advice on office management such as this: “It is possible that a public officer busies himself for many hours of the day and yet accomplishes little, because he has not studied time economy and is not familiar with its advantages. The soul of the art of time-saving is order. The administrative business must be distributed as evenly as the circumstances



permit in order to avoid an excessive volume of work in certain periods. Otherwise one is bound to succumb to the burden, and some matters are too long delayed, while others are treated superficially. No business should be postponed if there is sufficient time to deal with it at once; this is the least permissible with the most complicated subjects. If one is afraid of them and shelves them for weeks, they are often forgotten for months, and frequently become more difficult in the course of time. Several important matters are likely to accumulate, and the official gets lost in a labyrinth from which he cannot rescue himself."<sup>8</sup> But efficient administration alone does not make municipalities living organisms. A well-to-do citizenry began to clamor for a definite share of political influence, outside the channels of recruitment for the public service. It was Stein, a statesman himself risen from the ranks of Prussia's bureaucracy, who revitalized the idea of self-government by creating in the Municipality Act the legal forms for constructive participation of the people in local affairs.

In this way the civic energies of the governed were enlisted in one of the most important fields of public administration. A remarkable degree of political representation was bestowed upon the citizenry several decades before Prussia received her first constitution. In arranging its own house, local government gained free scope, subject only to that amount of state supervision which a reasonably balanced system of administrative integration necessitated. Soon the chief features of the Municipality Act were adopted in other German states. As time went on, the municipality in fact acquired a greater range of home rule in its proper domain than that enjoyed by local bodies in England and in France. The municipal corporation of prewar times did not depend on special legislation for the authority to establish and administer enterprises of a cultural, social, or economic nature—such as libraries, stadiums, trolley-car systems, water works, savings banks. The very status of the German municipality under the law implied unencumbered initiative in the pursuit of the common good. Thus local government performed, as a stanch Liberal has said, in many respects the same functions as did constitutional safeguards of democracy in other countries.<sup>9</sup> It educated the people for governmental responsibility and served as a check against the menace of autocratic isolation, which in the end leads to civic indifference or to violent adjustment.



In 1883 Prussia utilized the lesson by providing for the permanent cooperation of the units of self-government in the immediate conduct of state administration. To this end special committees, largely composed of elected representatives of local authorities, were set up at the seat of each regional or district subdivision of state administration; the committees were entrusted with the task of deliberating, together with the responsible state officials, all principal administrative matters. After 1919 the republic could hardly do more than to mobilize the citizenry the same way in the expanding realm of national administration.

Stein's reforms centered on popular consultation—where was the "soldier state" in his day? Was it perhaps the driving force behind Prussia's public service?

### *The Emergence of the Public Service*

The Thirty Years' War had left Germany in the grip of disaster. Hardest hit perhaps was Brandenburg, "the Holy Roman Empire's biggest sand-box." But in 1640, eight years before the end of the "eternal feud," the reins of government had been taken over by Frederick William, the Great Elector. He soon proved equal to a situation which spelled chaos. Throwing all his energies into mending his country's defenses, he was able in 1675 to check Sweden's Continental ventures by defeating her magnificent army at Fehrbellin. Neither he nor his successors, after 1701 the kings of Prussia, ever forgot what they owed to their grenadiers, whose military record was later to fortify Prussia's claim to leadership in national affairs. But as one cannot plow with the sword, so one cannot govern with it. This the Great Elector painfully realized when wrestling with his domestic rivals, the Estates, semiparliamentary bodies representative of the feudal lords and the city gentry. Although both nobility and urban patricians looked upon each other with unveiled jealousy, the Estates nevertheless stood well entrenched in a strategic position between the throne and the people. In accordance with often confirmed privileges, they controlled the state's purse strings. Thoroughly unwilling to assume financial responsibility for the monarch's recovery program and resentful of any suggestion of political leadership, they were bound to thwart effective planning. The Great Elector met the challenge by subduing the Estates.



To this purpose the monarch embarked upon a policy of concentration of executive power by building up a public service accountable to him alone. For obvious reasons its personnel could not be drafted from the camps of his opponents. Of necessity it had to be recruited from that broad social stratum which carried the burden of feudalism and the urban patriciate with sullen unwillingness. In the common man the Great Elector found his natural ally. Brandenburg's young civil service was "the royal answer to feudal pretensions and local patriotism."<sup>10</sup> As the executive branch was consolidated in spirit and organization and at the same time gradually expanded, so declined the influence of the nobility and the cities, which the monarch unscrupulously played off against each other. When he died, in 1688, the entire revenue system, the postal administration, and public education were under the uncontested control of the Crown. In addition, the state administration rested on a dependable field service which had largely absorbed the functions of local government.

The Great Elector's reign marks a turning point in German history. His hard-willed and visionary grandson, King Frederick William I, transformed the work of experimental intuition into a comprehensively conceived administrative system. Not unlike Colbert in France, he crystallized the essential elements of executive action with such recognition of his country's needs that until today the work of his creative thought has remained clearly discernible. In his personnel policies he pursued the course initiated by the Great Elector. Tension and hostility still existed between the monarchy and the Junkers, whose veto power the king had vowed to "ruin" almost as soon as he had ascended the throne, in 1713. Consequently, he picked as administrators, in his own words, "the best heads" regardless of descent. Public administration, now truly the backbone of the state, was a commoner's domain, while the nobility and the "dumbbells," as the king was fond of saying, were reluctantly admitted to the judiciary. In this way the new profession of career officials in the executive branch, in its key positions not less than in the subordinate service, became an institution assuring the plain middle class of a definite place in the process of government.

Merit alone afforded the standard of selection. It was incorporated in the Royal Instructions of 1722 and 1748, which laid down



specific professional requirements for the top ranks of the state's administrative services. Candidates were expected to familiarize themselves at the universities with administrative science, economics, agriculture, and forestry in order to qualify for the probationary service. Their capacity had to measure up to the test of theoretical and practical examinations. Appointment was based on no other consideration than conscientious preparation and professional ability. At a time, a British authority remarks, "when England and America in this respect were barbarian, and France profligate, rules of training and recruitment were formulated in Prussia which successfully provided efficient staffs."<sup>11</sup> The early democratization of the executive branch placed Prussia's administration on a broad social foundation, while the high level of the public service insured resourcefulness and productivity. This fortunate combination, more than anything else, accounts for the lasting preponderance of an ideology focused on executive initiative rather than on legislative guidance. As Great Britain's contribution to modern government was the erection of parliamentary institutions, so Germany's lay in the civil service. As in England the political energies of the nation found in Lords and Commons the medium of self-expression, so Prussia's "enlightened monarchy" made the administrative hierarchy of competence the prime instrument of governmental integration.

The result was not popular government in terms of the democratic dogma. Yet the crew which manned the ship of state consisted of the unprivileged. Not sovereign rulers but public servants, they nevertheless impressed their human standards on the process of power. Absolutism had changed its face. It awoke to a realization of political responsibility. And although Prussia's kings knew of no mandate superior to that of their own insight and conscience, they conceived their stewardship in the light of social obligation, as guardians of the common good. The Great Elector made his princelings memorize the Latin maxim that the ruler's duty is to preserve the public interest—*res publica*—and not to give way to private ambitions or dynastic aims. Frederick the Great summed up this political philosophy by speaking of himself as "the first servant" of the state. He thus placed the sovereign on the same plane as his professional administrators, whose creed, too, was devotion to the



public weal, essentially a goal that shaped the minds of generations.

A "soldier state"? With more justice could Prussia be called a "civil service state." But it is obvious that even this term conveys as much error as it does truth. While it may emphasize that government in Germany was molded on the pattern of authority instead of "civil rights," it does not disclose the fundamental importance of the public service as a life career which held attraction for the finest yield of the educational system, although monetary reward was scant. While it appears to stress the pivotal position of Prussia's executive branch, it does not make explicit the popular basis of the bureaucratic structure. While it points to the strength of civil service tradition and prestige, it suggests government by a caste instead of government for the people. More relevant than a proper label is the fact that the Second Reich preserved the Prussian legacy of executive self-reliance as it did the spirit of Stein's reforms.

The National Civil Service Act of 1873 made the principle of life tenure a general rule in order to guarantee the administrative independence and nonpartisanship of the public service. And when in 1919, after revolution and disaster, the German people through its delegates gave itself a democratic constitution, the issue of party rule versus professionalized administration presented one of the least controversial problems. "Civil servants," the constitution proclaimed, "are servants of the whole people, not of a party." As "servants of the whole people" they were expressly assured in the republic's "basic law" of selection by merit, permanence of tenure, and their "duly acquired rights"—the institutional guaranties of stability and continuity. As a consequence, their status could henceforth be affected by national legislation only if passed in the form prescribed for constitutional amendment. No more impressive tribute could German democracy, in the moment of its triumph, pay to the idea of administrative integrity and efficiency.<sup>12</sup>

### *"Government of Laws"*

The turbulent year of 1848 had repercussions on most European governments. In Germany it brought forth the Constitutional Assembly which convened in Frankfort's austere St. Paul's



Church. In March, 1849, this body of political idealists and university professors adopted a Reich constitution; it went into effect two months later, but, although never repealed, failed to create a Reich. When King Frederick William IV of Prussia declined the imperial crown, the lofty scheme collapsed. With it vanished the constitution's Part VI: The Fundamental Rights of the German People. But a bill of rights crept into Prussia's first constitution, "granted" by her monarch in 1850. No such catalogue was included in the Second Reich's constitution of April, 1871.

The omission caused no regrets. But it illustrated the change of intentions. The Frankfort Assembly tried to master Utopia. Bismarck strove hard to conquer reality. He confined himself to wresting from the German dynasts the concession of political unity under Prussian guidance. The people, on the battlefields in France and at home, demanded a Reich, not "fundamental rights." The "German dream" was about to come true. This single fact overshadowed all other considerations. Moreover, in contrast to 1849, "fundamental rights" were no longer a promise but constitutional law in the states. Conceived as a check on administrative authority, they would have had little relevance in the conduct of the national executive branch. For though the constitution gave the Reich ample lawmaking powers, it saw no need for a broad structure of national administration. The execution of national statutes fell to the states, subject to Reich supervision; correspondingly, the police power was left in their hands without restriction. Much more vital than "fundamental rights" appeared the fact that the constitution provided for equal suffrage with no strings attached. The elected branch of the national legislature, the Reichstag, received its mandate from the German people as a whole. In the second chamber, the Federal Council, sat no representatives of the nation—except the Reich chancellor; it was composed of delegates of the federated state governments, of which three were republics: the "Free and Hanseatic" city-states of Hamburg, Bremen, and Lübeck. These state delegates voted according to the instructions of their governments.

As to Prussia, the virtual predominance of the executive branch found its counterpart not so much in the constitutional bill of rights as in the rather closely knit network of concrete



rules governing the administrative process. It is noteworthy that effective and speedy redress of grievances caused in the exercise of executive power was urged almost as soon as public administration had grown conscious of its institutional significance—urged particularly by high officers in the civil service themselves. Fifty years before the Frankfort Convention a career administrator insisted that “means should be facilitated by which grieved citizens may file their complaints with the superior departments,” and that no citizen, in doing so, should have to anticipate “any expenses or the least loss, whatever its cause may be.”<sup>13</sup> Throughout the executive branch considerable thought was given to perfecting the complaint procedure in order to check abuse of power. In fact the professional ethics of the public personnel, the very notion of service, already made abuse appear offensive.

Credit for having most forcefully summarized the argument for “government of laws” must, however, go to Rudolf Gneist, again a man familiar with the civil service from within. In his epoch-making book on the *Rechtsstaat*, published in 1872, Gneist advocated judicial review of executive measures as a matter of political principle. He stressed the advisability of special administrative courts, wholly independent of the executive hierarchy, yet composed in such a way as to insure a reasonable synthesis between the necessities of governmental control and the citizen’s interest in a dependable device for his protection against undue or arbitrary interference. Three years later the Prussian Supreme Administrative Court was organized as the apex of a new pyramid of administrative justice. It soon lived up to Gneist’s expectations.

Few tribunals exerted greater influence on the development of German administrative law than did this court. It gave the validity of a maxim to the idea that every single administrative act must be retraceable to statutory authorization. In numerous decisions it made explicit the subtle lines of demarcation between legitimate and unlawful motives for the exercise of executive discretion wherever discretionary powers were granted by the legislature. It specified the legal conditions and forms of police measures, voided ordinances which appeared to overstep the bounds drawn by the court’s precedents, and incidentally built up a systematic common-law code of administrative action



which established definite standards of restraint, while not forgetting that government is to govern.

In German administrative law, a leading authority takes pride in pointing out, "the presumption is in favor of the citizen's freedom from governmental coercion."<sup>14</sup> In the administrative courts the government had to show cause instead of sitting back and letting the plaintiff do the pleading. To the citizen, administrative justice offered quick and inexpensive remedies. To the public service, on the other hand, it transmitted inflexible criteria of legality. Administrative law thus fulfilled an eminently political purpose. As a consequence, it assumed a prominent part in the academic training program for the higher civil service. The powerful legal tradition of the executive division has not failed to strengthen the bonds between the nation and its government.

### *German Federalism*

To Madison's mind, federalism commended itself as a safeguard against the rule of factions; history proved him wrong. For Bismarck, when designing the constitution of the new Kaiserreich, the federalist solution was the price of unity, a necessary evil which might some day be overcome, as political union acquired self-evidence in the mind of the German people; latter-day experience proved him right. The constitution of what subsequent generations have come to call reverently Bismarck's Reich was federal wherever the existence of Germany's ruling dynasties inevitably required the preservation of concerted procedure, national wherever the circumstances permitted. In the federal sphere the Reich was a union of princes presided over by the King of Prussia as the German Emperor. In the national sphere it was a commonwealth dedicated to the promotion of the interests of the German people.

Apart from equal suffrage, the constitution bestowed upon the citizens of the federated states a uniform civil status national in character. All discriminations against out-of-state residents fell with one stroke throughout the nation. In addition, wide elbow room was granted to the national legislature. Its powers included, besides control over the tariff, the regulation of business, commerce and industry (whether interstate or intrastate), railroads, mail and telegraph, civil and criminal law including



procedure, the press, and association. In the field of national administration the constitution set up a customs union superintended by the Reich, gave the Reich the right to organize its own national railway system, monopolized the postal and telegraph administration in its hands, consolidated the defensive forces under the command of the emperor, and provided for a national budget to be passed each year by the legislature. The budget was to embrace all revenue and expenditures including those for national defense. If Bismarck betrayed the "soldier state" in 1866, the conclusion seems inescapable that he sinned again five years afterwards.

The national legislature followed the bicameral pattern, giving the chambers an equal share in the lawmaking process, so that federal and national considerations were both brought into play. In general, however, between the Reichstag and the Federal Council, the latter wielded greater authority in so far as it had not only legislative but also executive and judicial functions. It possessed, for instance, certain ordinance-making powers specified in the constitution and was to serve as a board of arbitration should a political controversy arise among different states. No less important was the provision that a minority of fourteen votes in the Federal Council could block any constitutional amendment. Since Prussia as the largest state held seventeen votes out of a total of fifty-eight, her veto was in this respect absolute. But a combination of southern states could easily accomplish the same result. In this arrangement the nature of the Second Reich as a federation of German states was particularly manifest. Quite appropriately the Federal Council has, therefore, been called the supreme organ of the Reich, its sovereign body.

In the Federal Council, Prussia's influence surpassed that of any other state, as Bavaria, the next largest state, controlled only six votes while Saxony and Württemberg followed with but four each. Yet, as the majority of the states—many of them "dwarf states" like Reuss and Lippe—had one vote each, they thus were distinctly overrepresented; for Prussia alone included more than half of Germany's population and about the same proportion of the Reich's territory. This was again a concession to the federal principle. In addition to Prussia's voting strength in general, her monarch, in his capacity as emperor, possessed



special prerogatives with regard to bills dealing with military matters or the Reich's tax revenue. In these bills he was entitled to "strike out" proposals aiming at a change of existing statutory provisions, should the Federal Council be divided on them. Last, but not least, it was the emperor who appointed the Reich chancellor and the national civil servants. Technically speaking, the chancellor served as the one-man cabinet of the emperor, whose measures required the chancellor's countersignature. Accordingly, the chancellor, not the emperor, was answerable for the conduct of the Reich's affairs; this responsibility no one shared with him. The undersecretaries in charge of the various divisions of the national executive branch were his subordinates, not his colleagues. Nor could the Reichstag lighten the burden of his accountability. For the constitution provided no machinery to this end. As there was no vote of censure, so there was no vote of confidence.

Reichstag and chancellor, though both the buttresses of the national structure, stood constitutionally apart from each other. As the representative organ of the nation, the Reichstag was to voice the sentiments and opinions of the people. But while it could criticize national policies, it was unable to inaugurate them. Their final formulation was left to the Federal Council as the permanent conference of "state ambassadors" whose chairman was the Reich chancellor. Of course, the Reichstag was theoretically not deprived of the opportunity to assert its will through obstruction by simply withholding its consent from all bills submitted by the Federal Council, including the budget. But on the one hand, such a procedure was fraught with complications, as the emperor, with the approval of the Federal Council, had the right to dissolve the Reichstag; and on the other, the electorate itself was anything but obstruction-minded. After all, the constitution was the legal foundation of the reconstructed Reich—the Reich for which generations had been longing. It insured not only political homogeneity but also the unity of law. The perplexing problem of uniform legislation, civil and criminal, was soon solved in a smooth and effective manner through national codification. A Supreme Court of the Reich supervised effectively the administration of justice throughout the country. Whether all technical devices of political adjustment were perfect or not, the very existence



of the Reich fostered a new spirit, a new outlook, a new attitude which engendered national cohesion.

### *The Nation in the Making*

This new outlook was much more of a check on both the Federal Council and the national executive branch than the limited constitutional powers of the Reichstag. Bismarck himself was a spirited protagonist of the new attitude. In the long years of his tenure he translated it into an established standard. At the same time, however, he appreciated the Reichstag merely as a medium of information. It was to supply him with a map of general orientation, to mirror the public mind, but not to lay out for him the avenues of politics. The chancellorship thus qualified itself as a truly Prussian institution. The lone grandeur of concentrated responsibility for the last decision, the urge of the service motive, and the acute distrust in the efficaciousness of competitive group pressure as the parliamentary alternative to selection by merit—all this betrayed its ideological origin.

Being reduced to an observation platform rather than a laboratory of politics, the Reichstag could hardly be expected to divert toward itself the springs of national energy which nourished public administration. Civil service remained *par excellence* the life career in government. Nor did the executive branch cease to be the centerpiece of the political system. Wherever the professional administrator sensed specific problems—such as naturally presented themselves in the course of rapidly advancing industrialization—he was prone to turn for elucidation directly toward professional men in the field rather than to the representative assembly. Hence the new vogue of commissions of inquiry, which ebbed again toward the end of the century when the administrative machinery had adapted itself to a novel economic and social setting. None of these inquiries—into tariff policy, railroad rates, labor conditions, the iron, textile, tobacco, and beet-sugar industries, and the stock and commodity exchanges—were conducted as parliamentary investigations. Instead, they were called forth by executive initiative, and were dominated in their procedure by “men who knew,” including the directorial personnel in the central departments.



Yet it must not be forgotten that under Bismarck's leadership the government set out to explore the no man's land of social insurance with the same bravado which distinguished the Great Elector's venture into the no man's land of civil service. Through nation-wide contributory schemes of health insurance, old-age insurance, and industrial-accident insurance, labor obtained a measure of social security unheard of at that time. By drawing into the administrative boards of these public insurance systems representatives of the employees as well as their employers, the state initiated cooperation where otherwise class struggle would have held the field. Within the bounds of capitalism a working industrial democracy was conceived destined to assert itself all over Europe. Small wonder that before the World War many German trade-union leaders took about the same attitude toward their government as that which Sir Stafford Cripps, able spokesman of British Labor, recently expressed: "I believe that for a social democracy a constitutional monarchy in the developmental stages is obviously the right thing to have if you start with it. I do not say necessarily you would construct it if you did not start with it, but if you have it, it would be absolutely folly to do away with it."<sup>15</sup>

### *Breakdown*

While the people was unable to oust the Reich's one-man cabinet through its representative assembly, and while it did not pick the chancellor, prewar Germany was nevertheless not a police state but rather a service state. With no immediate need for territorial expansion in Europe, the Reich was eager to preserve its "place in the sun." It had acquired a European status only after supreme efforts. Being a newcomer in the concert of powers, it was not unmindful of its isolated position. Domestic tranquillity alone promised conservation and economic prosperity. The realization of this committed the government to a policy of subtle balance in its dealings with neighbor countries as well as at home. In foreign affairs the balance was soon upset through the rash and inconsistent moves of Emperor William II, who ascended the throne in 1888 and shortly afterward broke with Bismarck. In domestic affairs the nonpartisan tradition of a stable executive branch supplied a behavior pattern well fitted to carry out a policy of balance. The public service



stood squarely beyond the petty quarrels of the day, beyond economic competition, and beyond the strife of political factions. Because it was distinctly conscious of being the instrument of government, the categorical imperative of dealing with conflicting interests without prejudice and favor hardly needed concrete enforcement; it was safely embedded in the conscience of the civil servant. On neutralized ground, professionalized administration "vitalized the state on its constructive side and its active rather than its passive aspects."<sup>16</sup>

To be sure, there remained many issues which demanded settlement. But none of them precluded by its nature reasonable adjustment in constitutional form. The widely accepted assumption that the Second Reich was doomed to fall on account of its very structure is scarcely tenable, except on the basis of a hasty *ex post facto* diagnosis. Executive domination tempered with responsiveness had developed its own equilibrium in the professional ethics and social composition of the public personnel, in the counterpoise of a thriving system of local self-government, and in the consistent cultivation of administrative justice. While by no means a democracy, neither was the Kaiserreich a crumbling, antiquated castle unfit to serve as a dwelling. In August, 1914, when the European world suddenly burst into flames, the whole people rallied behind its government. Labor, otherwise in opposition, swung immediately into line. Somehow the process of diplomacy had failed. But no one voiced the suspicion that emperor and chancellor had not done all in their might to forestall war. Stunned by the impact of the catastrophe, the nation laid down its tools. In the barracks workers lined up side by side with business men, farmers, bankers, students. The Reich was in danger, and their's was the Reich.

Five years of sacrifice followed. Hundreds of thousands left never to return. Hundreds of thousands perished under the iron grip of blockade. This was not a government's war; it was a people's war. The Reich was at stake. But there is a limit to human will. When the spring offensive in 1918 fell short of success, despair began to haunt the nation. In the fall a naval mutiny broke out in Kiel. It spread without meeting resistance. The gigantic apparatus of authority collapsed overnight. The front held no longer. The emperor fled to Holland. The Reich was on its knees.



## 2. "INTERREGNUM"—WEIMAR DEMOCRACY

"The enemies know, or will learn, that German democracy will conclude no bad peace unless it wants to forfeit its future." Thus Professor Max Weber, Germany's eminent sociologist, prefaced a keen appraisal of the future role of civil service and political parties in a "reorganized Germany,"<sup>1</sup> published in 1918. The author died one year after the Treaty of Versailles was signed. His prediction was to gain grim validity as time went on.

*The Weimar Convention*

In January, 1919, the new authorities summoned the German people to the polls in order to elect a Constitutional Assembly, which convened in Weimar early in February. The elections proved the Socialists the strongest group, although not in a commanding position. Moreover, they were divided into two factions. The moderate Social Democrats won 163 seats, while the radical Independents obtained but 22, thus giving them together 185 representatives as compared to a total of 236 non-Socialist deputies. Of the latter, 79 were German Democrats, and 91 belonged to the Catholic Center Party; these two groups were willing to cooperate with the Socialists for the sake of German democracy but not for the sake of Socialism. The remaining representatives were distributed among some insignificant "splinter parties" and the two right-wing opposition groups: the German People's Party of which Dr. Gustav Stresemann was a prominent member (19 deputies); and the stronger German National Party (44 seats), some ten years later the political partner of a man who at the end of the war was an obscure subcorporal, critically gassed, and just miraculously regaining his eyesight—Hitler.

The task of drafting a constitution fell to Professor Hugo Preuss, who had left his academic work in order to serve as the new head of the Reich Department of the Interior. His draft tended clearly toward a unitary solution; and indeed, as the German dynasties were no longer, there could have been no better opportunity for tearing down the obsolete barriers of federalism. Wrote Preuss in a memorandum attached to the draft: "It goes without saying that the new Reich cannot be a



federation of princes or state governments; neither can it emerge from a federation of the existing states in their new form as republics. Of prime and decisive significance for the political organization of the German people is not the existence of the states, either in their monarchic or in their republican form, but rather the existence of this people itself as a historically given unit. There is neither a Prussian or Bavarian nation nor a Lippean or Reussian nation; there is only one German nation which is to shape its political organization in the German republic." But the constitution which the Weimar Assembly after almost six months of debate adopted, with the votes of the Social Democratic, the German Democratic, and the Catholic Center parties, did not live up to the unitary intentions which Preuss had professed. It reflected the spirit of compromise and dissension rather than a great common impulse. It failed to carry the Reich idea to its logical conclusion.

While it increased the powers of the national government, it maintained essential features of federalism. While it set up a system of parliamentary democracy, it presented in its lengthy enumeration of "Fundamental Rights and Fundamental Duties of the Germans" a curious blend of Liberalism and Socialism. Private property, for instance, was expressly protected in the constitution; but it was added that "property entails obligation. Its use shall at the same time be a service to the common good." The issue of socialization was left dormant. It is true, the Reich acquired legislative control over the "socialization of natural resources and economic enterprises, as well as the production, manufacture, distribution, and price regulation of goods and commodities for the national welfare." But two Commissions of Inquiry on Socialization, appointed by the government in 1919 and 1920, soon lost themselves so helplessly in "infinite conversation" that their proceedings seemed to do little more than mirror an "epoch of restlessness."<sup>18</sup> In November, 1918, the Labor leaders, who assumed governmental responsibility when mutiny turned into revolution, had, in the first proclamation of the short-lived "Council of People's Commissars," set themselves the "task of realizing the Socialist program." Three months later they faced the necessity of bargaining with non-Socialist parties in order to secure a parliamentary majority in the Constitutional Assembly, and could well be satisfied that



this majority was willing to install their candidate for the Reich presidency, Friedrich Ebert, in the highest office of the republic. Incidentally, President Ebert was never to stand for popular election, for in 1922 his "provisional" term was prolonged by constitutional amendment until June, 1925. A few months before that date he died.

### *The New Constitution*

Under the constitution of August, 1919, the people were to elect the chief executive of the nation, the Reich president, as well as its legislative body, the Reichstag, the latter on the basis of proportional representation. The voting age was reduced from twenty-five to twenty years, and equal suffrage was extended to women. Popular initiative and referendum were introduced, which in the following decade proved of less practical value than the framers of the constitution had anticipated. Whereas formerly the executive branch had been supreme in the inception and pursuit of national policies, the center of gravity shifted now to the legislative branch, the Reichstag. It is true the president was granted the power to appoint the chancellor and, on his recommendation, the Reich ministers, who were charged with the conduct of the central departments in accordance with the chancellor's political program. But this program itself was not primarily tuned to executive necessities; instead it was drawn so as to satisfy the parliamentary majority. For the constitution made the tenure of the chancellor and each of his ministerial colleagues dependent upon the confidence of the Reichstag; through a vote of censure the legislative branch could at any time force the resignation of the cabinet or its individual members.<sup>19</sup> This application of the key formula of parliamentary government naturally influenced the composition of the cabinet. During the lifetime of the Second Reich civil servants had prevailed; under the republic party men dominated.

The public service, otherwise barely affected in its professional homogeneity, was thus capped with "parliamentarians," some petty politicians, some gifted leaders. But most of them were certainly not on a higher intellectual or ethical plane than their permanent undersecretaries, division heads, and bureau chiefs, although surpassing the professional administrator as astute



political meteorologists with both eyes on the parliamentary weather chart. Under the constitution of 1871 the national executive branch was not kept in ignorance of what the people felt, and it evinced its ability to adjust the political course to the undercurrents of popular sentiment. In a comparatively stable situation, chancellor and Federal Council had encountered no insurmountable difficulties in compounding divergent interests, political, social, and economic, into a relatively consistent long-term program. But in the deliberating stage the government was sufficiently removed from the arena of partisanship to gain perspective. In the new "epoch of restlessness" the virtual identity of parliamentary majority and cabinet caused group demands to rebound with unprecedented vehemence on the administrative structure. It was now the minister himself who, consciously or unconsciously, assumed the role of the lobbyist. As cabinets came and fell, policies barely conceived were as quickly discarded. The pliability of changing party coalitions made far-sighted planning a practical impossibility.

The parliamentary system, on the other hand, was superimposed, as it were, on established political traditions which the constitution was designed to uphold. The civil service, national, state, and local, obtained a Magna Carta of institutional security in the bill of rights. Local self-government was constitutionally safeguarded in its political status. Forcefully backing the *Rechtsstaat* doctrine of German administrative justice, the republic's "basic law" provided that in the Reich, as well as in all states, administrative courts must exist "for the protection of the individual against decrees and measures of executive authorities." But here again, Weimar democracy was to demonstrate its incapacity to clear away the remnants of "states' rights." The Reich defaulted on its pledge to create a National Supreme Administrative Court to which appeals could be carried from state courts. Although in the domain of national administration a number of tribunals exercised judicial control over the executive branch, the ultimate unification was not achieved. Thus the vast structure of German administrative justice remained without the keystone.

As to the federal features of the constitution, the former Federal Council was perpetuated under the new and somewhat misleading label of National Council. Logically enough, it



was no longer the Reich's supreme body; all sovereignty had fallen to the German people. In its composition the National Council differed somewhat from its predecessor; a number of "dwarf states" disappeared, particularly through the creation of a new state, Thuringia, within which some of these were amalgamated. Prussia's influence was curtailed. Out of a total of sixty-six votes, Prussia held twenty-six; but half of her votes were reserved to representatives of her provincial bodies, who were constitutionally freed from any obligation to side with their state government in casting their votes. Instead of having an equal share in the process of legislation, the National Council was restricted to a suspensive veto with regard to bills passed by the Reichstag. The latter could overrule the veto by confirming its original decision with a two-thirds majority. Of greater weight was the veto of the National Council under the procedure for amending the constitution. In the Reichstag constitutional amendments required an exceptional quorum of at least two-thirds of the total membership and a two-thirds majority of those present. In the National Council such amendments called for a two-thirds majority of the votes cast. Hence, if in the National Council a minority surpassing one-third of the votes cast objected to the amendment, their objection amounted practically to a veto. This veto the Reichstag was unable to set aside by sheer voting strength. If it readopted the amendment, the National Council could parry by forcing a referendum.

### *The Want of Leadership*

On the whole, the diffusion of the postwar party pattern—enhanced, though not caused, by proportional representation—offered a strange contrast to the strong, but unorganized, popular urge toward "more perfect union." Reich reform in the sense of greater national consolidation became an issue which demanded action.<sup>20</sup> But parliamentarism failed to furnish leadership. The patent difficulty of keeping heterogeneous political partners at least temporarily combined as a parliamentary majority engendered passivity rather than drive, lame compromise rather than straightforward consistency. On the other hand, the political trading which prevailed in the Reichstag had disillusioning effects on the public mind. Instinctively constitutional theory



began to search for checks to be imposed on the representative assembly. Judicial review of the constitutionality of national statutes assumed the proportions of a first-rank problem. In the Second Reich it was commonly agreed that the lawmaking bodies were supreme in their realm. At Weimar Professor Preuss, as an "old champion" of unrestricted judicial review, had played with the idea of expressly entrusting to the courts the authority to void unconstitutional measures if passed by the Reichstag. But he had met opposition on the part of the Socialists, who were horrified by the "notorious practice of the United States Supreme Court."<sup>21</sup> As a consequence, no final decision was reached. Yet a few years later, the National Supreme Court of Justice identified itself with a rising "new school" of constitutional thought by claiming the uncurtailed authority to review the "legality of legislation"<sup>22</sup> with such telegraphic brevity as to make John Marshall's reasoning in *Marbury v. Madison* appear monstrous.<sup>23</sup> The professionalized judiciary, through its lifetime-appointed personnel, recruited the same way as the higher civil service and from the same social strata, thus indicated its determination to audit the accounts of parliamentarism. The bill of rights gained new significance as an enforceable code of restraints addressed to the legislative branch.

In concrete terms, parliamentary government meant that the public service in its top structure was interlinked with the party system. This fact, in itself, could have worked as a source of strength. It failed to do so because the postwar party system lacked steadiness. But the Weimar constitution did not only affect the executive branch at the top. Unconsciously perhaps, it tampered with its foundations. In the bill of rights it explicitly bestowed upon the civil service "freedom of political opinion and association." For the first time in the history of German administration a constitutional provision encouraged political affiliation of the public personnel. Fortunately, the administrative profession itself was well aware that its entanglement as a body in party politics would necessarily result in an insoluble conflict with the idea of life tenure in a republic where government depended on the electorate's choice among competing factions. Moreover, the disciplinary courts stood firmly for civil service neutrality. Civic freedom of the public officer, the courts asserted, involved no alteration of essential professional duties. The implications of "civic rights" had to be construed in the



light of political neutrality. "Freedom of association" did not include a "right" to strike. Nevertheless, there could be little doubt that the "new freedom" left it fully to the discretion of the civil servant to join political parties, whether or not they supported the government of the day—except probably those of a "revolutionary" character. While under more tranquil conditions the constitutional grant of "civic rights" might have been of no undesirable consequence, in Germany's tempestuous postwar epoch it resulted in conflicting loyalties and harmed the *esprit de corps*.

The situation soon became acute when in 1922, as a consequence of the assassination of Minister Rathenau by members of nationalist organizations, the government clamped sharp restrictions on the civil servant's right of free opinion "for the protection of the republic." The new law, passed in the form prescribed for constitutional amendment and hence unassailable before the courts, restrained every public official, national, state, and local, "from all activities which cannot be reconciled with his position as a servant of the republic." In addition, it transformed numerous higher positions in the executive branch into "political offices." Those affected by this change could at any time be "temporarily retired" for an indefinite period "in the interest of consolidating the constitutional republican form of government." Considerable tact or membership in a "safe" party were henceforth at a premium in the higher civil service career, quite apart from professional training and administrative ability. On the other side, as the constitution facilitated parliamentary candidacies among public officers, on the average up to one-fifth of the Reichstag membership were civil servants on "constitutional leave," distributed over all "safe" parties and everywhere equally welcome as professional experts. Without being fully aware of it, the administrator began to adopt the thought pattern of the parliamentarian—the parliamentarian of an era of uncertainty. And what would happen, should one day an "unsafe" party, such as the "revolutionary" National Socialists, upset the apple cart?

### *The Shadow of Versailles*

"Real political freedom can be erected only upon economic and political foundations having the promise of internal and international stability." This is not a passage from the Treaty



of Versailles, but from an American committee report dealing with the future of the Philippines.<sup>24</sup> At the Paris Conference in 1919, when Lloyd George suggested moderation in imposing territorial sacrifices on Germany, Clemenceau instructed Tardieu to reply with that "uncompromising directness which Anglo-Saxons accept." Said the French note of March 31, "Before the war Germany was a great world power; her 'future was on the water.' It was in this world power that she took pride. It is this world power that she will not console herself for having lost. Now we have taken away from her—or are going to take away from her—without being deterred by the fear of her resentment, all her colonies, all her navy, a great part of her merchant marine (on account of reparations), and her foreign markets in which she was supreme. Thus we are dealing her the blow which she will feel the worst. It is hoped to soften it by some concessions in territorial terms. This is a pure illusion; the remedy does not correspond to the ill." Lloyd George as an Anglo-Saxon accepted such "uncompromising directness." Germany never did.

On June 16 the German Peace Delegation received the final text of the Treaty; it was to be signed unconditionally within seven days or military operations would be resumed. The Delegation promptly resigned. The Reich cabinet headed by Social Democrat Philipp Scheidemann resigned. Exclaimed the Premier, "The hand will wither which signs the Treaty!" On June 22 the Weimar Assembly, after hectic debate, voted to submit to the Treaty, but to reject the clauses providing for the rendition and punishment of those Germans pronounced guilty of "international crimes," mostly high army officers. The same day, the Allied and Associated Powers again demanded unconditional acceptance of the terms. On June 23 amidst general confusion the Assembly—under the leadership of Representative Erzberger, who was murdered a few years afterwards by those who never forgave him—complied with the demands of the enemies, "yielding to superior force, and without changing its view about the incredible injustice of the peace conditions," as the resolution stated.

American democracy was sanctioned in a strenuous Revolutionary War which led to independence. Weimar democracy, by the law of causality, was closely connected with the break-



down of 1918. Politically mortgaged to the roof, the republic from its very beginnings faced irremovable obstacles to popularizing its ideology. Its hands were tied, in addition, by the division of the electorate into a Socialist and a non-Socialist camp. Even in its "organic law" the young democracy had to bow to the Treaty of Versailles. The constitution expressly stated that its provisions were in no way to affect the precedence of the terms of the Treaty. Thus before the Weimar Assembly had adjourned, the Allied and Associated Powers forced through Germany's abrogation of a constitutional clause granting representatives of Austria "advisory votes" in the National Council "until her union with the German Reich."

In the February elections of 1919 the Independents, who pursued the course of Communism, had fared badly. But they were well entrenched in the local Councils of Workers and Soldiers which as offspring of the revolution dominated particularly the urban centers. The Council of People's Commissars, the provisional national government, did not identify itself with the idea of a dictatorship of the proletariat. It aspired to a democratic solution in line with the policies of the Social Democratic Party, the "Majority Socialists." Hostility smoldered between Majority Socialists and Independents. As the latter controlled the local military depots, rebellion began to flare up throughout the Reich. The national government was without dependable forces; it decided to call for volunteers. The response was gratifying. But those who reenlisted were not workers; they were front officers, students, clerks—in short, sons of the once pivotal middle class. Most of them hated the "republic of traitors"; but they were willing to "restore law and order" under the republican authorities. They went through the ordeal of ruthless warfare from city block to city block—war of Germans against Germans. In twelve months the issue of Communism was settled. The Independents could continue to foster their cause in electoral campaigns; but their grip on the essential equipment for revolutionary overthrow was broken. Out of the ranks of the republic's Praetorian Guards, Germany's new professional army was built up. In fighting strength it was soon in a position to laugh off any domestic challenge. Against its will no party could rise to power by *coup d'état*. That left the issue of Communism settled.



On the other hand, the "restoration of law and order" through hand grenade and machine gun did not rebuild Germany's national economy—already strained to the breaking point from meeting war needs, seriously dislocated by Germany's territorial losses, and staggering under the burden of war reparations. The collapse of the currency in 1923 revealed the lack of solid foundations. Psychologically the disaster of the *Mark* put the republic on the defensive for years to come. At the same time, it uprooted the middle class, which in a few months lost the basis of its security—mortgage investments and savings deposits accumulated by long years of toil. Squeezed in between organized trade-unionism and organized industry, the small-scale entrepreneurs and craftsmen sensed their doom.

### *The Way of a Leader*

"Hugo Preuss gave Germany a new constitution—but neither a new state nor a German status. To blame him and his collaborators would be very unjust; for in those years of breakdown there was nobody able to give us this status. In the meantime we have seen that the Weimar constitution is one thing, the German status another. Who will create it? It is easier to say who will certainly not create it. No one, obviously, who faces the people today with a password of destruction rather than of construction. No one who today goes into the streets in order to recite noisily his petty program: Down with Marxism! Vengeance for the November crime! Annihilation of the Prussian state! Hell and pestilence to the Jews, Freemasons, Jesuits! Whoever acts like this resembles a pregnant woman who takes poison and thus kills her child immediately before she gives birth to it. The German of this hour, so full of distress, suffering, uncertainty, danger, and longing—should he really not have grasped that creation has never been called forth by hate, but from eternity to eternity by 'the highest wisdom and the greatest love' alone?" It was Leopold Ziegler, two years before winner of Germany's Goethe Prize, who in 1931 asked this question.<sup>25</sup> He thought in terms of his own conception of the future Reich, while those who "noisily recited their petty program" proceeded to break the ground for it.

Since the close of 1928 the latent crisis of the German national economy, allayed for some time by the influx of foreign capital,



had assumed the appearance of acute decomposition. The government soon faced the necessity of drastically reducing public expenditures, including the Reich subsidies to a belatedly enacted unemployment insurance scheme. Harassed by this dilemma, the Social Democratic Party withdrew in 1930 from the national cabinet. The incoming governmental coalition under Chancellor Brüning pursued a deflationist course, insisting on rigid economies. Meanwhile, unemployment was mounting month by month. In the fall elections widespread dissatisfaction manifested itself with elementary force. The people, groping in the dark, turned toward a new prophet—Adolf Hitler. His political organization, the National Socialist German Workers' Party, gained with one leap almost a hundred seats in the Reichstag.

The man who so efficaciously capitalized unrest and desperation could take pride in both his dynamic power over the masses and the fanatical zeal of his agitation against Versailles and against the republic. Born in 1889 in Austria, just across the German border, the son of a customs inspector whose routine work young Adolf despised, he spent a sheltered childhood. But when he was thirteen, he lost his father and four years later his mother, to whom he was deeply devoted. His parents' meager estate left him no choice except to earn his own living. He bade farewell to his high-school chums, dismissed his dream of attending the art academy, and went into "the wide, wide world," only to become a building-trade worker in Vienna. During the following years of drudgery at low pay he can hardly have rejoiced at his fate, and he must have felt out of place among his fellow-laborers. Though originally neither race conscious nor class-minded, he resented instinctively trade-union "bosses," who possibly sensed in him the "outsider." As there was considerable organized anti-Jewish sentiment in prewar Vienna, Hitler's thoughts began to wander between two poles. He definitely ceased to be what he later called a "meek cosmopolitan" when eventually overtaken by the idea of a pernicious world alliance between Jewish internationalism and Marxist internationalism. This idea pressed itself firmly on his adolescent mind. To what extent it was actually predicated on unhappy personal experiences, Hitler has never disclosed.

In 1912 Hitler moved to Munich, without much improving his lot. He was a stern, ascetic youth, not given to participating in



the easy-going gayety of an easy-going city. At the outbreak of war he immediately enlisted as a volunteer in the German army, and served with distinction. A haggard and hollow-eyed man, he heard the shouts of the revolution through the windows of a German military hospital where he was recovering from the frightful effects of British mustard gas. A few months later he was back in Munich, where he joined, without quite knowing to what end, a group of half a dozen men who styled themselves a party; two dollars were in their treasury. In September, 1919, he faced his first audience, consisting of seven people. To his surprise, he found words. From now on he stuck to politics. Some twelve months afterwards he was no longer surprised to sway an audience of seventeen hundred. Next year the young party numbered three thousand. Money came through membership dues and moderate contributions from those who attended the party rallies. In order to protect the meetings against riotous opponents, some of the members were assigned special guard duties. Local organizations of the party shot up throughout Bavaria—a state which after a brief period of Communist rule had now monarchists among its cabinet members. In 1923 the special guards were combined into a semimilitary unit—the Storm Detachment. The first swastika banners were solemnly consecrated.

In the fall Hitler thought the situation ripe for a military *coup*. In 1920 a counter-revolutionary uprising, the Kapp Putsch, had temporarily driven the "Red" government from Berlin; but a general strike thwarted the rebellion. Hitler planned with greater care. So strong was the "Movement" now that its leader could assure himself of the active cooperation of the highest Bavarian authorities in Munich, civil, military, and police. In the evening of November 8, at a mass meeting in the Bürgerbräu Beerhall, Hitler declared the national government in Berlin removed and superseded by a national government in Munich in which his conspirators at once accepted cabinet posts, while the jubilant crowd burst into "Deutschland über alles." During the following night, however, Hitler's partners reconsidered the pact.<sup>26</sup> Next noon they greeted their mentor with a fusillade. There were dead on both sides. Captain Göring, one of Hitler's hard-driving aides, was seriously wounded before the eyes of his chief. No bullet struck the Leader.



A sensational trial followed. Hitler, assuming exclusive responsibility, was convicted of high treason and served a term in a fortress cell. He spent his time writing the story of his struggle, *Mein Kampf*,<sup>27</sup> which was to become the Third Reich's political classic. In December, 1924, he was pardoned, shook hands with his warden, who took this occasion to profess himself a National Socialist, and went immediately ahead gathering his scattered forces.

Before the next year had passed, the party counted 27,000 members; 49,000 at the end of 1926; 179,000 in 1929. It polled 6,500,000 votes in the September elections of 1930, thus becoming a factor in national politics. But its relatively slow, though steady, growth from 1924 to 1929 and its sweeping gains in the first two depression years made explicit that the electoral success of 1930 was by no means primarily due to the appeal of the "unalterable" party program, the Twenty-five Points, adopted as early as 1920. Many National Socialist voters had never read it. Others entertained considerable mental reservations as to the relegation of the Jewish population to "guest" status, whatever that plank of the party platform might involve. Those, however, sufficiently inquisitive to glance at the plain phrases of the Twenty-five Points could find there, each according to his personal taste, a lot of good things which no other party offered in such a generous assortment:<sup>28</sup>

"Abolition" of the Treaty of Versailles; equality of rights in international dealings; reunion of "all Germans on the basis of the right of self-determination of peoples"; land and colonies "for settling our surplus population"; a conscript army; "the creation of a strong central power of the Reich"; "unconditional authority" at the top; "the schools must aim at teaching the pupil to understand the idea of the State"; "the creation of a German national press"; "it must be forbidden to publish newspapers which do not conduce to the national welfare"; "positive Christianity"; "the common interest before self-interest"; a bigger and better public health program, protection of mothers and infants, and more physical training; "abolition of incomes unearned by work"; "abolition of the thralldom of interest"; confiscation of war profits; nationalization of trusts; "profit-sharing in the great industries"; creation of a "healthy middle class"; "communalization" of department stores; "prohibition



of land speculation"; "abolition of interest on mortgages"; capital punishment for "usurers and profiteers"—the emphasis on what in 1935 was hailed as "freedom" and on the economic sorrows of the middle class is conspicuous.<sup>29</sup>

Yet, National Socialism had a Janus head. As the Movement of the diametric alternative to the Weimar system, it drew its strength from all those quarters which had come to identify bad times, or what had caused them, with the existing regime. The National Socialist vote was in the first line a protest vote—not a rational endorsement of the Twenty-five Points, but the emotional response to a man who was the Party, a man propelled by a holy obsession, whose thunderbolt oratory made throngs sweat from psychic strain. The very impact of his ringing voice, of his unpretentious language, carried conviction. This was no "platform technique," or artful political electrotherapy, but the explosive outburst of faith. Suddenly his listeners recalled again how in 1918 they, too, had shed tears over their country's humiliation, as did Subcorporal Hitler in his hospital bed. His was the argument for a better and richer life—an argument made invincible not so much through genuine eloquence, untiring repetition, and crude simplicity of presentation, but rather through the people's keen realization of national and individual insecurity.

Judicious captains of industry had Hitler address their exclusive clubs, where he was saluted with many a "Very good!"—soon converted into hard cash. In the meantime he captured the rising generations of young voters, most of them either jobless or at least threatened with unemployment ever since they left school or finished their vocational training. Among these, large numbers were sons of unionized workers, even offspring of Communist voters. The ranks of the Brown Shirt Storm Detachment were swelling. To the Storm Troopers National Socialism meant primarily the promise of a true Social Revolution. Their loyalty to the Leader was surpassed only by the vigilance with which they watched his steps among those "in possession." Tension originated within the Movement. As early as 1930<sup>30</sup> Otto Strasser, prominent in Party headquarters, raised the question: Ministerial Chairs or Revolution? But Hitler was able to stamp out Strasser's opposition, and even to check open internal rebellion in Berlin under the leadership of



Captain Stennes, another Social Revolutionary. The very composition of the Party foreshadowed the bloody "purge" in the summer of 1934.

### *The Republic Capitulates*

While the German banking system began to totter, owing to the failure in July, 1931, of the Darmstädter und National-Bank, second largest in the country, Chancellor Brüning's policy of maintenance, vigorously attacked by Communists and National Socialists alike, found a parliamentary basis only in the more or less benevolent neutrality of the Social Democrats. Barely able to hold their ground in national elections, they were motivated in their attitude by what adverse conditions had left them: the miserable choice between bad and worse. For all practical purposes the Reichstag became inoperative; Brüning had to resort to "government by emergency decree." Weimar democracy was in full retreat. When in the spring of 1932 Field Marshal von Hindenburg, the republic's second president, stood for reelection, the Social Democratic Party saw no alternative to backing him against his two rivals: Adolf Hitler and Communist Ernst Thälmann. In this campaign, which gave Thälmann no chance, Hitler met his first rebuff; Hindenburg, Germany's "Grand Old Man," was returned by a convincing majority.

The election settled nothing but showed that the republic was without reserves. In a frantic move it had rallied behind a man who was most emphatically not its standard bearer. Brüning's days were numbered, unless he either undercut Hitler's support in the electorate or bridged the unnatural cleavage between the president and his original right-wing sponsors of 1925. In an entirely abnormal situation the Chancellor failed to work wonders. A subsequent election in Prussia proved the National Socialist tide to be rising. Outrages between left and right extremes became the order of the day. The death toll was mounting. At the end of May, 1932, president and chancellor parted company.

The new premier was Hindenburg's personal choice: Franz von Papen, a Conservative. Hitler, though head of the second strongest party in the Reichstag was not considered, obviously on account of the ill feeling which the presidential campaign had left with the chief executive. Consequently, the National Socialist



Party turned at once against the new chancellor. Where Brüning had hesitated, Von Papen tried to force his luck. The Reichstag was dissolved. Ten days before the elections the cabinet staged a show of strength which made even National Socialists gasp: by emergency decree Prussia's state government under Social Democrat Otto Braun was expelled, and its members were immediately barred from their office rooms. The Chancellor made himself National Commissioner for Prussia. No general strike followed. But the scheme was wanting in electoral success for the Von Papen cabinet. The number of National Socialists in the Reichstag more than doubled. Though short of a commanding majority, nevertheless they now represented by far the strongest faction.

### *The National Revolution*

In August, 1932, a German official, a little late for a luncheon engagement with some Americans traveling abroad, explained to them: "I have never before attended the Constitution Day ceremonies. Today I went to celebrate the last Constitution Day." Constitution Day over, Hindenburg on Von Papen's advice summoned Hitler. The National Socialist Leader rejected the idea of a governmental coalition under Von Papen or another Conservative but wanted his own cabinet. That ended the conversation. In September the Reichstag was again dissolved. The outcome of another electoral contest was deadlock as before, with the National Socialists distinctly in the lead, in spite of some falling off in their vote. In November Von Papen resigned in order to facilitate direct negotiations between Hindenburg and Hitler. The negotiations came to a close in the same way as the August conversation. Early in December Von Papen's Minister of Defense, General von Schleicher, was appointed chancellor. It was clear that the final decision had not been reached. The nation remained under unbearable suspense. Indeed, at the beginning of the new year it was "hardly too much to say that Government itself was on the verge of collapse."<sup>31</sup>

While Schleicher tried without avail to draw some of Hitler's closest lieutenants into his cabinet and thus to undermine their leader's position, Von Papen continued to foster his plan of a "great united national front." Unquestionably the president's favorite, he was sure of Hindenburg's approval of any reasonable



arrangement he could reach with the National Socialists. On January 5 Von Papen conferred with Hitler in the home of a Cologne banker, Baron von Schroeder. Three weeks later Schleicher gave up the hope of finding a parliamentary foundation for his cabinet, and tendered his resignation.

On January 30 the "united national front" became a reality: Hitler, as chancellor, and Von Papen, as vice-chancellor, took the oath to the constitution. Besides Hitler, only two National Socialists entered the cabinet: Dr. Frick, as Minister of the Interior, and Captain Göring, as Aviation Commissioner. Von Papen, who also resumed his previous position as National Commissioner for Prussia, could count on the support of such Conservatives as Dr. Hugenberg, head of the German National Party, to whom the Ministries of Commerce and Agriculture fell; former ambassador in Rome and London, Baron von Neurath, a career diplomat who had served as Minister of Foreign Affairs since May, 1932; and Franz Seldte, chief of the war veterans' organization, the Steel Helmet, who became Minister of Labor. Unaffiliated career men were Count Schwerin-Krosigk, a former Rhodes scholar and one of the best minds among the higher civil servants in the Ministry of Finance, which department he had headed since Von Papen's appointment as chancellor; and General von Blomberg, the new Minister of Defense.

New elections were called for March 5 in order to secure a parliamentary majority for the Cabinet of National Concentration, which urged the voter to grant it a four-year mandate in order to relieve the farmer's plight and to wipe out unemployment. Prussia, under the whip of the Reich, was actually in a state of siege. On February 24 the headquarters of the Communist Party in Berlin were raided by the police. Social Democratic and Communist newspapers were suppressed. The government organized an auxiliary police force recruited from the ranks of the Storm Detachment and the Steel Helmet. If organized Social Democracy still had a fighting chance, the moment had come to fight.

Late on the night of February 27 Berlin was thrown in a daze by the news that the Reichstag building stood in flames. Next morning the government charged both the Social Democratic Party and the Communist Party with having plotted the fire. Communist deputies and functionaries were placed under arrest.



The government silenced the whole Social Democratic press in Prussia. Capital punishment was decreed for any serious disturbance of the peace. The virtual state of siege spread from Prussia all over the Reich. Months later, the National Supreme Court of Justice found no evidence to convict any German Communist or any German Social Democrat of participation in the crime. Its origin has remained a mystery.<sup>32</sup> But throughout the last week of the electoral campaign the Reichstag fire supplied the government with an excellent moral to broadcast. On election day the combined forces of the Hitler cabinet obtained 52 per cent of the votes cast, with a total poll of almost 90 per cent of the electorate. The National Socialists alone won no less than 288 seats.<sup>33</sup>

The clinch was broken. Hilarious days began for the victors, who left no doubt that the republic had ceased to exist. A Brown Shirt uniform was worth more than an official commission. Flag shops were sold out in a few hours. The vanishing of the old order was as striking as it had been in 1918. But here was a new spirit. School children chanted in the streets. In a fortnight the "Horst Wessel Song," National Socialism's anthem, had conquered every city, reached every hamlet. The transformation was "totalitarian" indeed. Boards of directors—whether of civic leagues or of stamp collectors' clubs—resigned in order to reemerge under National Socialist leadership. Executive secretaries busied themselves in "contacting" the Movement. Magazines and newspapers reflected the fundamental change not only in their editorials but also in a reshuffling of their personnel. All this "just happened." No one cared to wait for orders. Germany was entering the Third Reich.<sup>34</sup>

Less than three weeks after the election the Reichstag convened in the Kroll Opera House in Berlin. The chief item on its agenda was a far-reaching Enabling Bill. The bill vested the present cabinet for four years with full legislative powers, including the right to pass the budget, thus making the Reichstag practically superfluous. In the exercise of these powers the cabinet was permitted to deviate from the constitution, provided that the president's constitutional prerogatives remained uncurtailed. The only further restriction on the scope of "cabinet acts" was that they were not to tamper with "the institution of the Reichstag and the National Council as such." Naturally



the bill met determined opposition on the part of the Social Democrats—the Communist faction was barred from the session. But Hitler's rebuttal to Social Democracy's long-winded spokesman was lucid enough. "The pretty theories," he said, "which you, Herr Representative, have just proclaimed, have come to the knowledge of the world a little too late. Perhaps these considerations, if translated into practice years ago, would have spared you your present complaints. You once had the possibility of dictating the course of events."<sup>36</sup>

The passage of the bill was a foregone conclusion when Dr. Kaas, as head of the Catholic Center Party, read the following statement: "In view of the pressing emergency which people and government have to face today, in view of the gigantic tasks which we all have to shoulder for the sake of reconstruction, in view of the storm clouds which begin to appear in Germany and around her, we of the Center Party pledge ourselves in this hour to cooperation, also with our former opponents, in order to continue the work of national salvation, to accelerate the restoration of law and order, to erect a firm dam against chaos, together with all those who are sincerely resolved to promote the common good regardless of their political affiliation."<sup>36</sup> All other minor parties followed suit. In the division 444 yeas stood against the 94 nays of the Social Democrats.<sup>37</sup> The requirements for constitutional amendment were met—even if the full Social Democratic faction and all absent Communist deputies were counted as opposing.<sup>38</sup> Weimar democracy had abdicated under constitutional procedure.

## NOTES

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2. Hermann Oncken, *Cromwell. Vier Essays über die Führung einer Nation*, p. 29, Berlin, 1935.
3. *Ibid.*, p. vi.
4. Carl Schmitt, *Der Hüter der Verfassung*, Tübingen, 1931.
5. Carl Schmitt, *Staatsgefüge und Zusammenbruch des Zweiten Reichs*, Hamburg, 1934.
6. Herman Finer, *The Theory and Practice of Modern Government*, vol. II, p. 1069, London, 1932.
7. Hans Fabricius, *Schiller als Kampfgenosse Hitlers*, Bayreuth, 1932.
8. Fritz Morstein Marx, *Public Management*, vol. 17, pp. 21 ff., 1935.



9. Fritz Fleiner, *Institutionen des Deutschen Verwaltungsrechts*, 8th ed., p. 100, Tübingen, 1928.
10. Finer, *op. cit.* in note 6, vol. II, p. 1188.
11. *Ibid.*, p. 1184.
12. For more detailed information see Fritz Morstein Marx, *Civil Service in Germany*, Monograph 5, *Civil Service Abroad*, Commission of Inquiry on Public Service Personnel, pp. 161 ff., New York and London, 1935. See also Harlow J. Heneman, *The Growth of Executive Power in Germany*, Minneapolis, 1934.
13. Marx, *op. cit.* in note 12, p. 176.
14. Fleiner, *op. cit.* in note 9, pp. 131, 389.
15. *Manchester Guardian*, Jan. 21, 1935.
16. Charles E. Merriam, *The Making of Citizens*, p. 200, Chicago, 1931.
17. Max Weber, *Parlament und Regierung im neugeordneten Deutschland*, p. viii, Munich and Leipzig, 1918.
18. Eduard Rosenbaum, *Wirtschaftsdienst*, vol. 11, p. 1026, 1926.
19. In October, 1918, the Second Reich's constitution had already been amended to the same effect.
20. Roger H. Wells, *American Political Science Review*, vol. 27, pp. 237 ff., 1933.
21. Hugo Preuss in a letter of Feb. 26, 1924, addressed to the present writer.
22. Fritz Morstein Marx, *Variationen über richterliche Zuständigkeit zur Prüfung der Rechtmässigkeit des Gesetzes*, p. 155, Berlin-Grunewald, 1927. See also Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic*, Baltimore, 1928.
23. *Entscheidungen des Reichsgerichts in Zivilsachen*, vol. 111, pp. 320 ff.
24. *Foreign Policy Committee Reports*, no. 2, Jan., 1934.
25. Leopold Ziegler, *Fünfundzwanzig Thesen vom deutschen Staat*, p. 72, Darmstadt, 1931.
26. See Karl Rothenbücher, *Der Fall Kahr*, Tübingen, 1924.
27. It should be noted that the English translation *My Battle* (Boston and New York, 1933) is an abridged version.
28. See Gottfried Feder, *Hitler's Official Programme*, London, 1934.
29. See also Harold D. Lasswell, *Political Quarterly*, vol. 4, pp. 373 ff., 1933.
30. Otto Strasser, *Ministersessel oder Revolution?* Berlin, 1930.
31. Albrecht Mendelssohn Bartholdy, *Amerika-Post*, vol. 5, p. 28, 1933.
32. The version of the Reichstag fire based on the assumption of a National Socialist conspiracy, as given in *The Brown Book of the Hitler Terror* (New York, 1933) is "no longer tenable"; Frederick L. Schuman, *The Nazi Dictatorship*, p. 205, note 2, New York, 1935.
33. It appears that they drew support even from former Communist voters; see Schuman, *op. cit.*, p. 214.
34. For more detailed information than this text can offer, the reader is referred to: Calvin B. Hoover, *Germany Enters the Third Reich*, New York, 1934; Konrad Heiden, *A History of National Socialism*, New York, 1935; Ernst Henri, *Hitler over Europe*, New York, 1934; and Frederick L. Schuman, *op. cit.* It does not detract from the value of these books that not all of them can be rated as dispassionate accounts.





See also Herbert Kraus, *The Crisis of German Democracy*, Princeton, 1932; Paul Kosok, *Modern Germany*, Chicago, 1933.

35. *Verhandlungen des Reichstags*, vol. 457, p. 34 (A), 1934.

36. *Ibid.*, p. 37 (B).

37. *Ibid.*, p. 45.

38. The legal membership of the last republican Reichstag was 647. The combined forces of the Social Democratic Party (120 deputies) and the Communist Party (81 representatives) amounted to less than one-third of the total membership. Constitutional amendments required a two-thirds majority, with two-thirds of the membership present. According to established practice under the Weimar constitution, many times confirmed through action also by the Social Democratic Party, bills deviating from the constitution could validly be passed in the form prescribed for constitutional amendment.



## *Chapter II*

### THE CONSTITUTIONAL PATTERN OF THE ONE-PARTY STATE

What made Prussia was extreme effort and the inflexible will to master fate by taking grave risks. She forced her way to Central European recognition by breaking up established spheres of political influence. Success was contingent upon internal strength. In the hard school of rigid tests her political organization was bound to conform to the pattern of emergency government. It centered on the executive branch. But her bureaucracy was not an instrument of class rule; it interlinked the monarch and the people. While ideological emphasis rested on power, not on its limitation, in the exercise of power the state's "first servants," Prussia's kings, sought to realize objectives essential for the general welfare of the governed. While the process of political control stressed subordination, throughout Prussia's administrative system self-limitations of sovereignty were enforced which made citizens out of subjects. The "German dream" of a new Reich became a reality in 1871 not through Bismark's diplomatic skill nor through the accomplishments of Prussia's Army Academy but through her effective political integration.

Emergency government had paved the road to national unity and world power. It had stood the trials of history. The people, not blind to the lesson of the past and the outstanding record of its administrative services, were predominantly authority-minded. The catastrophe of 1918 did not remake the German national character. What democracy's contribution might have been under less unfavorable conditions than it actually had to face is difficult to ascertain. Undoubtedly it had no fair tryout under the Weimar constitution, overshadowed by the Treaty of Versailles. The Hitler "Movement," as an organization of uncompromising opposition, developed its ideology along the lines of resentful antagonism to the Weimar system. In addition, whereas the republic had petitioned for Treaty



revision, National Socialism was committed to the strategy of open challenge. Both facts account for the reenforcement of emergency government. Incidentally this shift was made less abrupt through a phenomenon worth consideration: the substitution of "presidential government" for "parliamentarism" in the closing stages of the republic.

### 1. RETROSPECT: THE REICH PRESIDENCY

When the old Field Marshal learned that he had won the race for the presidency, his first reaction was to ask for a copy of the Weimar constitution. For a long time he sat laboring through the text. Then, in a voice that betrayed as much surprise as satisfaction, he said, "Not bad at all."

This incident is nowhere recorded, and for good reasons. It is a fictitious story circulated as a political joke among those who viewed with consternation Hindenburg's election in 1925 as successor to Social Democrat Friedrich Ebert. As a political joke, it was an effectively poisoned arrow. It conveyed the impression that in the person of the president-elect the old regime had seized the steering wheel of the ship of state—the old regime, too hostile or too indifferent toward the republican order to treat the constitution as more than the symbol of Germany's subjugation to "foreign" democratic ideals. At the same time, it suggested that under the constitution the Reich president was anything but a figurehead. Well could Germany's most popular war hero have characterized his new position as "not bad at all."

#### *The President's Powers*

Although the revolution of 1918 displaced monarchy throughout the country, the framers of the new constitution were not inclined to scrap the monocratic structure of the national executive branch. Only a small group of delegates to the Constitutional Assembly proposed to entrust administrative control to a body of cabinet members, each of whom stood on an equal footing with his colleagues. The overwhelming majority were agreed that such a system, though fitting a small republic like Switzerland (where it is in effect) or the German states (which in fact remained without state presidents), would not be appropriate in the Reich. They favored a single chief executive as



indispensable in order to insure responsible direction of the central departments and a "relatively stable counterpoise"<sup>1</sup> against the legislative branch. For the same reason, the French presidency did not find advocates when it came to the question as to what type of chief executive would be most suitable; "too weak" was the rating it received. What of the American presidency? In many respects it looked quite attractive, yet it was obviously "too independent" to be compatible with the general framework of parliamentary government. But why not try to combine the advantages of both systems? This the "fathers of the constitution" proceeded to do. When the final draft was ready, the Reich presidency, not unlike monarchy in England, was safely imbedded in the principles of parliamentary statecraft. Yet it offered at the same time ample opportunities for a man with political vision to supply the "ignition effect" under his own responsibility whenever the engine of government appeared hopelessly stalled.

(a) Elected by the "whole German people" for a term of seven years, the president could be removed only in one of two ways: either through a plebiscite or if found guilty by the Constitutional Court, on charges preferred by the Reichstag, of a violation of the constitution or a national statute. His authority was rooted in the same sovereign electorate which the members of the Reichstag had to face for reelection at least every four years.

(b) The president was the official representative of the nation in the realm of international relations, commander-in-chief of the defensive forces, and head of the national executive division. In particular, he was empowered to appoint and dismiss, without the consent of legislative bodies, the chancellor, the Reich ministers, the national civil servants, and the officers of the army and navy, and also to grant pardons.

(c) Far from being merely a pawn in the parliamentary game, the president was vested with the authority to dissolve the Reichstag at his own discretion, though only once for any one reason, or to order a plebiscite on any act passed by the Reichstag. In this way he could force the electorate to take sides on issues arising between the legislative and the executive branches of the national government or between the Reichstag and National Council.



(d) To secure federal cooperation, the president was entitled, outside the channels of judicial adjustment of controversies between the Reich and the states before the Constitutional Court, to take action, "with the aid of the armed forces," against a German state defaulting on the duties "incumbent upon it according to the Reich constitution or the national statutes."

(e) Finally, the president held an even more formidable weapon in his hands, namely, the power to decree all measures "necessary for the restoration of public safety and order" whenever "public safety and order in the German Reich" were "seriously disturbed or endangered." In such an emergency the president's authority rose beyond the constitutional bill of rights: he could "temporarily" suspend the guaranties of personal liberty and private property, freedom of speech and of the press, and the right of peaceful assembly.

#### *Parliamentary Checks*

"Not bad at all." Nevertheless, the Reich president was in no way meant to assume the role of a dictator, aloof from the "representatives of the people" assembled in the Reichstag. Parliamentary checks were not lacking. Most important of all was the insistence of the "fathers" that the chief executive should not rule, but should carry out the policies of the Reichstag unless they conflicted with the constitution. To this end the constitution provided, first, that "all decrees and orders" of the president, including those of a military character, required "for their validity" the countersignature of the chancellor or the cabinet minister concerned, whereby they assumed political responsibility; and second, that the chancellor or a national minister must retire "if the Reichstag withdraws its confidence from him by an express vote." Here was a conspicuous interlocking of the lawmaking and the administrative functions of government—essentially a modification of the general principle of a division of powers underlying the constitution. This modification was not meant to encourage parliamentary interference with the president's executive discretion in the conduct of strictly administrative matters such as the organization of the central departments, appointment and dismissal of national civil servants according to the laws, or the disciplinary control of the Reich's public personnel. But he was not supposed to



place himself above the will of the Reichstag majority in the domain of general policies if it had found proper constitutional expression.

These basic rules of parliamentary government were further elaborated in other provisions of the constitution. As the Reich's responsible agent in the conduct of foreign affairs, the president was authorized to accredit and receive the ambassadors of other nations and to conclude treaties and alliances with foreign countries. Parliament, however, remained the final judge of political wisdom: alliances and those treaties "which concern objects of national legislation" required the consent of the Reichstag. To declare war and to make peace were not the president's prerogatives; both were matters of legislation. The appointive and removal power of the chief executive, except in his choice of the chancellor and the Reich ministers, was subject to statutory modifications such as the lawmaking branch might deem appropriate within the constitutional Magna Carta of civil service. Finally, presidential emergency decrees "for the restoration of public safety and order" did not transcend parliamentary control; they were to be rescinded "upon the demand of the Reichstag." Thus the new German brand of executive leadership avoided the pitfalls of a strictly "parliamentary presidency" in the sense of the French system, while on the other hand it represented, in the words of an American authority, a "definite improvement over the almost irresponsible situation in the United States."<sup>2</sup>

### *The Emergence of "Presidential Government"*

One of the most striking facts about contemporary political theory is its persistent clinging to concepts, dogmas, and thought patterns of the horse-and-buggy age. The economic revolution which community life has undergone since the Western World went machine-mad is gently ignored in the orthodox approach to the study of modern government. The dread of political power—absolutism's principal contribution to the ideology of representative government—was allowed to develop into a lasting phobia, although the growing complexities of industrial society began to cry out for competent direction. With each factory smokestack evidence of the individual's relegation to a minute cogwheel in a social mechanism beyond his grasp, the prevailing



doctrinal attitude remained satisfied to let political inspiration spring mysteriously from the mind of "the voter."

Undoubtedly, the Reich presidency, as the framers of the Weimar constitution conceived it in the turbulent spring and summer of 1919, was not intentionally designed to meet the need of competent direction inherent in modern industrial organization. The ruler was the Reichstag. Here lay the political center of gravity. But one had to be blind not to see that conditions actually bordered on civil war. Parliament, as a deliberating and policy-shaping institution, could not be expected to quell communistic rebellion or to check the latent threat of counter-revolution. Hence the emergency powers of the chief executive; hence their constitutional definition in remarkably broad terms.

This latter fact was soon to prove the silk thread on which the fate of the republic hung. The decline of German economy—caused on the one hand by five exhausting years of warfare, on the other by the destructive stipulations of the Treaty of Versailles, and aggravated to some extent by the spirit of social experimentation which accompanies reorientation like a shadow—made domestic crisis chronic, except for a temporary relaxation when easy money from abroad provided a lift. Campaign pledges were not redeemed as swiftly as they were given. Disillusion and unrest spread. The political parties supporting the new regime were thus put under severe strain. To them, national elections gradually became a liability. This experience weakened their inclination to assume responsibility freely when responsibility should have been theirs.

Their foundering called the chief executive out of his reserve position into the front line. Already under President Ebert the potentialities of "government by emergency decree" had been exploited to the limit. Under the impact of the economic depression, crisis government resumed its previous function. Constitutional evolution, as reflected by political theory and governmental practice, displayed a marked trend toward presidential leadership. Emphasis shifted to the "strong executive," who was featured not only as the "guardian of the constitution"<sup>3</sup> but as the exponent of a stabilizing "neutral power" above the pluralism of political factions. Such a construction, in spite of its feasibility in the light of the pressing exigency, came close



to upsetting the balance of power as established by the constitution.<sup>4</sup> Nevertheless the construction took hold. Around it crystallized what prior to the National Revolution became known as "presidential government."

Although "all decrees and orders" of the president depended for their legal effectiveness on ministerial countersignature, no constitutional provision prohibited the chief executive from removing the chancellor and with him the whole cabinet even over the chancellor's objections. For the latter's successor could validly countersign the removal order as well as his own appointment. In the choice of the chancellor, the president was held under no obligation to pick a candidate presented by the strongest parliamentary faction. It is true the new cabinet could not hope to survive if a Reichstag majority, however heterogeneous in itself, rallied firmly for a vote of censure. But the more the ravages of the economic depression spelled disaster for all parties except those uncompromisingly hostile to the Weimar system, the less they grew willing to face the risk of a dissolution of parliament and subsequent national elections. When President von Hindenburg let it be known in 1932 that henceforth eligibility for the chancellorship would be conditioned upon the candidate's complete freedom from party obligations, he was on the safe side. Certainly the new policy amounted to a sweeping reinterpretation of parliamentary government as compared to the way the framers of the constitution had expected it to operate. But it was the logical outgrowth of adverse conditions. More than that: for the time being it put a lid on National Socialist ambitions. Here was a bid for cooperation in the formation of future cabinets, addressed to the party which universal dissatisfaction and despair had made the numerically strongest faction in the Reichstag though not representing a majority in itself. Yet, while the President left the door open for National Socialist participation in the Reich government, he rejected Hitler's claim of "all or nothing."

With the announcement that the chancellor was no longer to be drafted from the ranks of party "regulars," "presidential government" made explicit what previously had merely been tacitly conceded: that parliamentary government in practice had deteriorated into indecision and obstruction. It is worth emphasizing that this had happened without a single alteration in



the text of the constitution; nor was it due to unconstitutional usurpation of power through the executive branch. All that had taken place was a profound change in the political atmosphere. In 1919, in spite of the uncertain situation, the promise of democracy, as an unexplored avenue, inspired a modicum of faith in a brighter future. In 1932 the country was in the grip of crisis psychosis as never before. Government hinged on the president's emergency powers and the last national asset the republic had: the professional civil service.

*"Government by Emergency Decree"*

The strength of this combination can be understood only if one keeps three facts in mind. First, the bureaucracy in itself was a neutralizing institution. Its skill and professional tradition found no counterpart in the Reichstag. Its sense of responsibility was on the whole unimpaired by parliamentary confusion. In fact, its high standards gave the executive branch greater prestige than "parliamentarism" enjoyed. Second, even in normal times legislative initiative virtually rested with the cabinet. Bills introduced by members of the Reichstag played an insignificant role in comparison to "cabinet measures"; their preparation fell to the ministerial civil service. Consequently, the undersecretaries and division chiefs in the central departments lacked neither competence nor experience in charting the course of "government by emergency decree" along the lines of hard necessity and the chancellor's program of political action. And third, the emergency clause of the constitution supplied the legal basis for the enactment of measures which a divided Reichstag was inclined to shelve, particularly if they represented economies which, though inescapable, were anything but vote-getting. The mergence of lawmaking powers and executive initiative overcame political deadlock.

It is a significant comment on what has occasionally been called "presidential dictatorship" that the expediency, if not urgency, of this mergence was recognized with "widespread unanimity."<sup>6</sup> The courts construed the emergency clause in a liberal way. So did the authorities on the constitution, whether Weimar "Loyalists" or not. Little doubt remained that the exercise of the president's emergency powers was not confined to situations which constituted an immediate threat to the



government; that the president was already entitled to make use of these powers if the Reichstag either failed, or could not be counted on, to pass legislation such as appeared necessary to keep government going; that hence his authority not only included the right to invoke martial law "for the restoration of public safety and order," but extended to economic or financial measures in all lanes of governmental regulation. It is true, "such lawmaking by the executive did not mean that the representative principle had been abandoned,"<sup>6</sup> as the Reichstag could at any time force the president to repeal emergency decrees. In practice, however, the matter was different. During the whole lifetime of the republic, the Reichstag has but twice interfered with the chief executive's emergency policy. The first instance, occurring in 1921, was of slight consequence. The second, in 1930, ended in the Reichstag's defeat. Here the issue was clear-cut. Chancellor Brüning stood for retrenchment, the Social Democratic Party, with an eye on the electorate, for "muddling along." The duel was over almost as soon as it had begun. The Reichstag, by majority vote, demanded that two pivotal emergency decrees be revoked. The president complied at once, as was his constitutional duty. But simultaneously he dissolved the Reichstag, thus making the responsible party go through the ordeal of another campaign. A few days later, substantially the same two decrees were reenacted as a new measure. When the legislature reconvened, it let this measure stand.

As long as he respected the general framework of the constitution, the president could be fairly sure not to be reversed by the courts. The decision as to whether "public safety and order in the German Reich" were "seriously disturbed or endangered" and what measures were "necessary for the restoration of public safety and order" rested primarily with him. For all practical purposes, the decree-making power, although restricted to "temporary" adjustments, corresponded in its scope to the domain of national legislation. This being accepted as the unwritten law of the constitution, learned controversies could arise over the question of whether even the budget admitted of passage by emergency decree.<sup>7</sup> Only once did the president experience a setback, and that was when he consented to Chancellor von Papen's high-handed scheme of stealing National Social-



ism's thunder by having an army lieutenant and ten men oust Prussia's "Red" cabinet in order to substitute a National Commissioner (1932). The Constitutional Court held that for one thing the federal structure of the Reich imposed a definite limitation on the use of the emergency clause. But in contrast to the general tendency toward extending judicial review to Reichstag acts, the decision demonstrated no eagerness to establish judicial control over the president's discretion as to the actual existence of a "serious danger" or the "necessity" of his measures within the wide range of constitutional objectives. In this latter respect, the decision amounted to a clear vote of confidence in the executive branch, and could count on the acclaim of constitutional theory.<sup>8</sup>

As a vote of confidence, the decision of the Constitutional Court paid homage not merely to the effective service rendered by Germany's bureaucracy but also to the chief executive himself. Indeed, the rise of the Reich presidency to political prominence was closely connected with the personalities of the two men who held this office, Friedrich Ebert and Field Marshal von Hindenburg, "both of simple greatness and exemplary conscientiousness, motivated by an iron sense of duty—prudent, calm, discriminating, moderate," both carrying out a policy of "reconciliation, of avoiding or mitigating crises and difficulties," yet willing "to assume full responsibility without faltering whenever conditions called for energetic action."<sup>9</sup> Nevertheless, while "presidential government" prevented chaos, it could have prevailed only as a military dictatorship openly defying the Reichstag and the constitution. But the price would have been civil war, as the three strongest parties—National Socialists, Social Democrats, and Communists alike—had left no doubt of their determination to consider such an attempt a clear-cut challenge. The "cabinet of the united national front" was the constitutional alternative. The March elections supplied "presidential government" with a parliamentary majority. Yet, in "presidential government" Weimar democracy had reduced itself *ad absurdum*.

## 2. THE LEADER AS SUPREME AUTHORITY

"What form of government have we now?" This question is shot at prospective candidates for sterilization as part of the



official intelligence test administered under the Third Reich's law for the prevention of unfit offspring.<sup>10</sup> If Herr Müller, summoned before the Eugenics Court, had thought of cramming for the test, this question might well have left him aghast. Should he try to slip through by parroting that slick phrase from the Propaganda Ministry's large repertory to the effect that Germany is today "the most ennobled form of a modern European democracy?"<sup>11</sup> It sounded fine. But wasn't there somewhere a hidden joker? Certainly this new democracy had nothing in common with "Weimar Liberalism." Instead it had a Leader. And very much so. No doubt it would be safer to mention *Der Führer*, perhaps by replying, "We live at present in a *Führerstaat*." What, however, if the next question were "And what is a *Führerstaat*?"

*"Führerstaat" and Popular Sovereignty*

Exactly what the *Führerstaat* is, even German political science is not prepared to say. "The new state," we are informed, "which has emerged from the National Revolution, is still in the formative period, and has not yet received its final shape."<sup>12</sup> A definite appraisal will be possible only after "the political type which must imprint itself on the German *Führerstaat*, has assumed clear features. The essential conditions have to be created through the political efforts of the Party."<sup>13</sup> In the meantime, we are advised to keep in mind that "the constitutional reality of the Third Reich cannot be mastered with the aid of juridical thought patterns of the past."<sup>14</sup> "Nor is it admissible," a government spokesman warns, "to determine National Socialism's political theory by drawing inferences from its system of thought. We, over whom National Socialism pours out its tremendous reconstructive and creative power, we who are struggling for it, are neither able nor competent to express its doctrine in words. The apostles have written no catechism, nor have they created a theology. We must confine ourselves to relating and comprehending as adequately as possible what has happened and what transformations we have witnessed."<sup>15</sup>

To relate what has happened is one thing, to comprehend it another. While the "thought patterns of the past" no longer suffice, uncertainty still extends even to the new political terminology. For a while adjectives such as "authoritarian" and



"totalitarian" seemed to be commonly accepted as appropriate qualifications of the *Führerstaat* concept. Recently, however, they have ceased to be in vogue. The reasons are patent. The display of political power has assumed such an obvious character, and has developed so conspicuously into a definite trait of the "most ennobled form of a modern European democracy," that the pert tautologies of earlier days began to sound offensive. If there is today agreement on any aspect of the *Führerstaat* doctrine, it exists in the current emphasis on the popular basis of the Third Reich.

"The new state is a *völkischer Staat*, is the state of national community."<sup>16</sup> "The people is the fundamental political value of the *Führerstaat*. Hence the German *Führerstaat* is a *völkischer Führerstaat*."<sup>17</sup> It has no other aim than "to restore the precedence of the commonwealth over individual fate in a homogeneous people, permeated by one national will; to place the public interest before selfish ends; and to bring about the true national community under the leadership of the best of the people, in which every willing fellow-citizen finds the feeling of mutual solidarity."<sup>18</sup> While the "authoritarian" government of Austria has been able to keep itself in power only through sternly prohibiting new elections, National Socialism as an eminently successful mass movement has never ceased to value popular response. The "National Resurgence" left the electoral law of the Weimar constitution fully intact. In addition, among the earliest measures passed by the Hitler cabinet was the new Plebiscites Act of July 1933. The Leader himself, in his decree of August, 1934, ordering a plebiscite on the abolition of the Reich presidency after Hindenburg's death, professed the "firm conviction" that "sovereignty must emanate from the people." Of course, "the people" in the sense of these quotations is not identical with the entire population. As late as September, 1935, a high national official and Party functionary estimated that 20 per cent of the electorate must "still" be classified as "foes of the state."<sup>19</sup> More concretely, therefore, popular sovereignty finds expression in what a majority of the electorate endorses. Except for the majority rule—as an "artificial democratic" device irreconcilable with the "leadership principle"—there is indeed no other rational method of determining the "national will." Small wonder, then, that National



Socialism has seen no escape from strictly conforming in this respect to the style of Weimar democracy. Copying religiously the law of the republic, the Plebiscites Act explicitly provides that "the majority of the valid votes cast is deciding."

This unquestionable relapse into the old-fashioned "thought patterns of the past" evidently leaves the Führerstaat doctrine no other alternative than to ignore the relevance of what the Plebiscites Act expressly states. The cited provision is brushed aside as being "only of formal significance."<sup>20</sup> But whatever its doctrinal significance, it fits in amiably with the Third Reich's handy characterization as the "most ennobled form of a modern European democracy." Moreover, the practical importance of the provision has repeatedly been underlined in official pronouncements referring to its wholesome results whenever the government has had reason to call for a plebiscite. Such plebiscites have been conducted on the issue of Germany's withdrawal from the League of Nations (November, 1933) and on the question of Hitler's succession to the position as "head of the state" (August, 1934). On these occasions "the people in its overwhelming majority" proved indeed to stand solidly behind the National Socialist cabinet—much more solidly than in the March elections of 1933. Where was the democracy bold enough to summon the electorate to the polls three times in two years of world-wide depression, and strong enough to assure the government of one unequalled victory after another? How could the Third Reich, with this enviable record of electoral and plebiscitary triumphs, be branded a "dictatorship"? National Socialism appeared in fact all set to outdo democracy through democratic accomplishments. But a curious dilemma ensued. For as the Führerstaat emphasized its foundation on the "consent of the governed," so its ideology was forced back to the ancient moorings of representative government. And while this rapprochement made a theoretically consistent elaboration of the "leadership principle" infinitely more difficult, it testified to the unbroken power of certain truths which in 1776 the "Thirteen United States of America" unanimously pronounced "self-evident."

### *Hegel Weighed and Found Wanting*

The "state of national community," we are assured, has as its main tasks the enrichment of national life, the strengthening of



national unity, and the development of national culture. Its justification lies in its achievements as the gardener of national culture, of German *Volkstum*. German *Volkstum*—that is more than the immediate present-day reality of the German nation. In its organic growth, it represents the continuity of generations, the visible manifestation of the immortal German soul. National Socialism aims at the perpetuation and aggrandizement of German *Volkstum* for ages to come. "If we speak of a millennium," a prominent member of Hitler's "Old Guard" recently exclaimed, "then, my dear comrades, let us bear in mind what the word *Jahrtausend* signifies: No one among us lives for himself, each of us lives only for his people. No one lives for his own happiness, each lives only for the happiness of the community. No one among us can say as he may have done before: 'My happiness lies in my home, in my business, in my profession.' No—we live beyond space and time in the millennial destiny of our people! That is our pride, that is our height—that we have built our own happiness into the fortress of German life."<sup>21</sup>

Is this a return to Hegel, whose political philosophy for more than a century has profoundly affected German constitutional thought? Does the Führerstaat merely revive the Hegelian primacy of the state over the individual? Does it style itself as a "perfected reality," as the ultimate determinant of reason and morality in all human relationships? The answer of contemporary German political science is emphatically "No!" The "deification of the state" has no place in the Führerstaat doctrine.<sup>22</sup> To all outward appearance, Hegel has fallen from grace. The last resort of authority is not the state, but, as Hitler expressed it at the National Socialist Party Congress in 1934, "We command the state" ("we," namely, those clothed with political power within their proper functions, as the Leader's aides hastened to explain). Command over the state, therefore, does not imply that sundry Party agencies are permitted to interfere with the conduct of government or administrative departments. For since National Socialism's "conquest of the state" the Leader's will permeates all branches of government just as much as it does the Party. But if "command over the state" is to be more than merely a figure of speech, it is clear that the "elite of leadership" recruited from the ranks of the Movement stands above the state. Above the state? Is it con-



ceivable to treat the engine as no longer a part of the car? Does it mean that the exponents of political power are in its exercise subject only to their own discretion?

Another dilemma, and an even more serious one. Behind it looms the cardinal problem of one-party state organization: how to effectuate a synthesis of party and state. To be sure, the official dethronement of Hegel has a very practical side. During its long and exasperating opposition period, National Socialism defied the state—the state of the Weimar system. While “the people,” or more concisely and in the words of Hitler himself “the suffering and the peaceless, the discontented and the miserable,”<sup>23</sup> began to rally under the swastika, “the state” continued to persecute the Leader, to suppress National Socialist Party activities, to gag the press of the Movement. These early childhood experiences of the Führerstaat ideology could not be discarded lightly. The victorious party had not captured the state in order to be reduced to a subordinate position within the state. Instead, the Party was to supply the vast reservoir of leadership essential to assuming “command over the state.” Both Party and state thus remained separate entities performing different functions: the Party as the select minority guarding the sacred dogma of National Socialism and spreading its message, the state as the indispensable instrument of government. And since neither Party nor state, in fulfilling its specific task, could claim identity with “the people,” the Führerstaat doctrine assigned to the latter a compartment all to itself. The Third Reich, then, though aspiring to ultimate political unity, is of “tripartite structure.”<sup>24</sup> People, Party, and state are combined only in the person of the Leader. No mean feat as a contribution to political thought, this “trinitarian” consequence is equally intriguing in the light of National Socialism’s “unitarian” creed. Meanwhile the old-time division of powers is declared in the same breath “individualistic” and hence obsolete.

As the state was not restored to political supremacy, the Führerstaat doctrine was quick to realize the obvious impossibility of pigeonholing the Leader simply as an organ of the state. Such a theoretical construction would deprive the notion of leadership of “all its content.”<sup>25</sup> That in 1935 Japan’s overzealous military patriots “cracked down” on old Professor Minobe, who for many years had been permitted to poison the minds of his students by



calling the emperor in true Hegelian fashion a state organ, was taken in Germany as a happy coincidence. Leaving aside for a minute racial differentiation, National Socialist editorials congratulated the Japanese on their "keen insight" in recognizing the sinister implications of the organ theory.<sup>26</sup> But what was true of the organ theory applied no less forcibly to the centerpiece of traditional constitutional thinking: the "outgrown habit" of conceiving the state as a juristic person, an "invisible personality," a corporate body. For "an invisible personality cannot be led, one can only act for it."<sup>27</sup> Having thus thoroughly demonstrated the logical incompatibility of the "leadership principle" with familiar patterns of political thought, the Führerstaat doctrine paused for an inspiration of guidance in mapping out in final form the unique reality of the Third Reich. No such inspiration has yet descended upon it.

To sum up: the German Führerstaat as a political type is still in the making, and its doctrine has so far fed almost exclusively on antitheses. "Tripartism" is in the last analysis a denial of unity, as it is a denial of the state as the manifest form of national organization. The Third Reich may boast of "three pillars": people, Party, and state. But on what common foundation these pillars rest, "Tripartism" leaves unexplained. Hegel considered the state the incorporation of the ethical imperative. National Socialism, more pragmatic, tossed Hegel's philosophy overboard because it did not make allowance for the highly empirical political claims of the Movement. But "reorientation" was no less precipitated by the unparalleled concentration of power in the hands of the Leader. In fact, one would search Hegel's works in vain for a passage such as the following paraphrase of a Hitler dictum: "Authority from above as the result of leadership conscious of its responsibility, confidence and discipline from below—these traits of a creed which is essentially that of a soldier, indicate the nature of the modern Führerstaat."<sup>28</sup>

#### *"Führerstaat" and Leader*

"Authority from above" and "discipline from below" as the dominant features of the "state of national community" accentuate the "leadership principle" rather than the representative basis of the Third Reich. It is, therefore, a pertinent question



whether the "leadership principle"—National Socialism's paramount offering to contemporary government—in the last analysis affirms or annuls popular sovereignty. In the absence of any specific constitutional procedure for the electoral choice of the Leader, the Führerstaat doctrine has resorted to mysticism in order to establish the popular foundation of leadership. "The law from which the Leader of the National Socialist state derives his authority and his policies, emanates from the national soul. He is therefore no longer the organ of a will above the people, but the executor of the will of the people itself in which he is rooted. We know what one calls him who rules the people according to its own real will, what the word is which signifies the character of the National Socialist state: *Der Führer*."<sup>29</sup>

Since the Leader is "rooted in the people," he is an organic part of "national community," and as such is close to the springs of German *Volkstum*. In responding to the "real will of the people" he does not cease to be an inherent element of the community. As both Leader and followers presuppose each other, so both draw strength from a relationship which is of necessity mutual. "Leader is the opposite of sovereign. He who leads, does not determine the goal himself, nor in an arbitrary way; the goal is determined by the led, who are the people. The Leader, however, knows the goal and the direction."<sup>30</sup> This knowledge of the direction, so it appears, determines his calling. But if that is the case, it is a foregone conclusion that the people can have no hand in selecting the Leader. For since they are ignorant of the direction in which to move in order to reach the goal, they lack any standard of judgment as to the essential qualification of the Leader, who alone is aware of the right way. Is it the voice from the oak, then, which transmits the message of leadership, as it did to Joan of Arc? Having once lent itself to mysticism, the Führerstaat doctrine is in fact satisfied to wind up its case with the arresting thought that the emergence of "genuine leadership" is "always an act of grace."<sup>31</sup>

It goes without saying that political metaphysics of this mystical nature admits of no rational criticism. But its immediate utility and its inspirational value must not be underestimated. The part played by "social myths" in the world of modern politics is not less than that once assigned by Plato to his "royal lie." For all practical purposes, the Führerstaat may



borrow heavily from the military pattern of "command from above" and "discipline from below." Yet the necessity of both will appear in a different light if justified through the goal which the people itself has determined. In demanding sacrifices the Leader merely acts as the "executor of the will of the people." His mission is defined through the common goal. While no one but the Leader "knows the direction," nevertheless his authority is limited to leading the right way. It is revealing that Dr. Goebbels, Minister of Popular Enlightenment and Propaganda, paid homage to responsive government by epitomizing the *völkischer Führerstaat* as follows: "Although the power is ours, we must never become the rulers of our people, but must always remain its humble servants."

Indeed, time and again the Hitler regime has explained that its sole motive is to check Germany's political and economic decline and to restore the Reich to a status worthy of itself. There can hardly be disagreement among Germans with regard to these general objectives. Nor can it be questioned that National Socialist stewardship has rigidly stuck to the task of reconstruction—as the Party head sees it. Few have cared to suggest that the Leader is actuated by thought of personal gain; that he does not sincerely believe in the recuperative effects of the course he steers; or that he is unmindful of the feeling of the masses. In fact, to the common man Hitler's whole personality cannot fail to mark him out as a "son of the people." His often voiced contempt for the "stiff collar" attitude and for the "intellectuals," the passionate tribute he has reason to pay to the "plain mind," the "heart to heart" style of his mannerisms, the spontaneity of his exultant reaction to throngs, the pointed simplicity of his Brown Shirt uniform displaying one single war decoration—the Iron Cross First Class, highest recognition of bravery for which a German private could hope—all these drive home the fact that *Der Führer* rose from the rank and file. Had any one a better right to claim first-hand knowledge of the revelations of the "national soul"?

Yet, since the first appearance of constitutional government, no German ruler has been so much beyond popular control as is the Leader of the National Socialist Movement. It is true that as early as 1932 the Party itself as a political organization had become, by its size and its composition, more representative of the



people at large than any of its competitors. In all electoral contests for power, however, it fell short of a controlling parliamentary majority. In the elections of March, 1933, it rode to victory only through the support of the Conservatives. But National Socialism was not willing to have its hands tied by temporary arrangements. Under the impact of the "Resurgence" the party system of the republic vanished. The Communist Party was the first to disappear: it was dissolved by decree. Soon the Social Democratic Party was extinguished in the same way. The other parties yielded to National Socialist pressure, and disbanded their organizations. Even Dr. Hugenberg's German National Party was not spared this fate. The house swept clean, a "cabinet act" of July, 1933, outlawed any attempt at founding new parties and expressly sanctioned the virtual monopoly of the National Socialist Party as the sole legitimate political organization of the electorate. Six months later the Party acquired through another cabinet act the status of a "corporate body of public law."

The "monolithic" structure of the Party and the remarkably even distribution of the National Socialist vote throughout the country as evinced in the March elections made the Movement the logical shock brigade of Reich consolidation. Where the republic had foundered, the Hitler cabinet immediately grasped its chance. Less than a week after the passage of the Enabling Act all state legislatures and elected bodies of local government, as city and county councils, were dissolved and reconstituted in accordance with the majority line-up of the March elections. The Communists were not "seated" at all; a little later the Social Democrats, too, found themselves "unseated." Thus political "homogeneity" was accomplished with one stroke of the pen. Early in April a further cabinet act subordinated the state governments to a new type of national officer, the *Reichsstalthalter*. Appointed by the Reich president on the recommendation of the chancellor, they assumed the functions of regional governors and were to insure the "observance of the chancellor's political program," particularly through their authority of selecting the state premiers. Federalism was on the wane. In the eyes of the people this accomplishment surpassed perhaps even the conspicuous results of the cabinet's vigorous attack on unemployment through a truly gigantic public works program.



At the same time, the original coalition government turned "monolithic." In March Dr. Joseph Goebbels, National Socialism's high-powered campaign manager in the Reich's capital, was appointed head of a new Ministry of Popular Enlightenment and Propaganda. Setting aside Von Papen's claims, Hitler made Göring acting Reichsstatthalter for Prussia. In June, 1933, Dr. Hugenberg resigned from his cabinet position. His two portfolios fell to National Socialists. Ministers von Neurath and Seldte reconsidered the political chances of their sponsor, Vice-chancellor von Papen, and pledged their allegiance to the Leader. The Movement had squeezed Conservatism off the political stage. In order to make the obvious explicit, the Reichstag was disbanded. New elections in the fall of 1933, in which the voter's choice extended merely to either endorsing or rejecting one single National Socialist ticket, were shrewdly combined with the plebiscite on Germany's withdrawal from the League. But the Movement could base its appeal to the voter also on what official election posters summarized in these words, "In eight months we have set to work two and a quarter millions of countrymen, abolished the class struggle and its parties, defeated Bolshevism, and overcome states' rights." Almost 90 per cent of the whole electorate backed the government on withdrawal; more than 87 per cent cast their ballots for the National Socialist ticket.<sup>32</sup> Ever since, the Reichstag when called upon has voted for any bill submitted to it—unanimously, enthusiastically, and by acclamation. On January 30, 1934, in celebration of Hitler's first anniversary as chancellor, it voted Federalism out of existence, and bestowed upon the cabinet the power to "create new constitutional law."

### *The Powers of the Leader*

Leadership as a social phenomenon lasts as long as it remains effective. It must face the rigid test of workaday drag and disillusion. On the other hand, it is essentially "totalitarian." Conceptually, it denies limitation. It may affect the follower, body and soul, clutch every thought in his mind, make a different man out of him. At the same time, the follower's response reacts on the leader. As leadership defies enforcement through constitutional law, so it cannot seek refuge behind it. The labors of the Führerstaat doctrine are largely due to the difficulty



of translating social phenomenology into terms of political theory. But as long as power matches leadership, the empirical reality of the Leader's virtual omnipotence is easily perceived. The Third Reich's constitutional pattern closely follows the outlines of Prussia's emergency government. The Leader has succeeded the monarch. But there is one paramount difference. Responding to the dominant spiritual trend of its epoch, "enlightened monarchy" confirmed its alliance with the commoner through tolerance. Time and again the Great Elector, a loyal Calvinist, held a protecting hand over the Reformist and Catholic minorities in a prevalently Lutheran country. Frederick the Great spoke of Prussia as the kingdom in which everyone could seek salvation "in his own fashion." A Royal Instruction of 1786 exhorted the public service to "place particular emphasis on alleviating the lot of the Jewish nation." "Enlightened monarchy" was essentially without a creed, except that of service. And this creed of service received its final shape from below: in the outlook and behavior of the professional administrator. National Socialism, on the other hand, as the child of discord, threw all its energy into creating "one national will" by short cut. Consequently, it insisted on intolerance, on the unconditional acceptance of its own creed. This creed is necessarily administered from above.

Whether or not President von Hindenburg deemed his position under the Weimar constitution "not bad at all," the present "head of the state" can claim that his own was made to order.

(a) Under the Succession Act of August, 1934, "the office of Reich president is combined with that of the chancellor. As a consequence, the former prerogatives of the Reich president pass over to the Leader and Reich Chancellor Adolf Hitler. He determines his substitute." As National Socialism plans in terms of a "millennium," so the office of Leader and Reich Chancellor is a lifetime position. On this point again the Führerstaat doctrine is agreed. That the Leader and Reich Chancellor has not yet named his substitute indicates that the choice is not easy. Whether he has determined his successor is unknown to the public. He may have done so in his "political testament."

(b) The Enabling Act conferred practically unrestricted legislative powers on the cabinet. The Reconstruction Act of January, 1934, passed unanimously by the Reichstag without



debate, granted the cabinet the more sweeping authority of "creating new constitutional law." The same act abolished the state legislatures, transferred all state sovereignty to the Reich, and subordinated the state cabinets directly to the national cabinet. Legislation throughout the country has assumed the form of decree. But the Führerstaat doctrine leaves no doubt that it is not the cabinet but the Leader who gives sanction to all laws. Here too it is "only of formal significance" that the Enabling Act and the Reconstruction Act both speak of the cabinet as the recipient of the grant of power. Any act, whether passed by the Reichstag or adopted by the cabinet, is "the plan and will of the Leader."<sup>33</sup> The cabinet members, having sworn the oath of fidelity to the Leader after the adoption of the Succession Act, are no longer the chancellor's colleagues, but his first servants, confined to the function of offering their advice on, and drafting in their ministries, proposed measures. But if on scrutiny the Reichstag statute as well as the "cabinet act" is rooted in "the plan and will of the Leader," considerations of form and procedure lose well-nigh all significance. In fact, the Führerstaat doctrine knows of another "new source of law" binding for the courts:<sup>34</sup> the "independent ordinance-making power of the Leader"<sup>35</sup> and, in addition, any official measure of the Leader, "for instance, a proclamation read at the Party Congress."<sup>36</sup>

(c) While the concentration of lawmaking and executive powers in the person of the Leader is perhaps the most striking evidence of emergency government, his authority also far surpasses that which the Reich president wielded as chief executive. He concludes and ratifies all international treaties, including alliances, under his sole responsibility, as the Enabling Act has done away with the Reichstag's right of consent. The power to grant pardons has simultaneously been augmented by the Leader's right to intercept criminal trials or investigations according to his own discretion. His appointive power extends to all state civil servants as it does to the national bureaucracy. In practice, of course, suggestions for appointment, promotion, or dismissal of national and state officials reach the chancellery through the regular channels, normally through the Reich Ministry of the Interior, to which the administrative supervision of the eleven Reichsstatthalter is also entrusted. Except for the higher civil



service, the Leader has delegated the exercise of his appointive power to central departments, as the Reich president had done before. Since the fall of 1935 the Substitute for the Leader in Party Affairs, efficient and circumspect Rudolf Hess, who was made Reich Minister without Portfolio after the bloody "purge" of 1934, has been advising the Leader on all governmental appointments. Finally, the Revised Reichsstatthalter Act of January, 1935, transferred to the Leader the unqualified authority to appoint and dismiss the personnel of the state cabinets which, after the abolition of the National Council in 1934, continue to operate for the time being as regional executive divisions of the Reich under the guidance of the national governors.

(d) Specific emergency powers such as were vested in the Reich president are no longer needed, as the integral powers of the Leader are equal to any conceivable emergency. If he resorts to the right of "state self-help," his acts are valid as the logical manifestation of the "leadership principle."<sup>37</sup> Consequently he may at any time assume judicial functions, as he did during the "purge" of 1934 when acting for three fateful days as "the German people's supreme judicial magistrate" and simultaneously as this magistrate's executioner in order to quell the "revolt" of the Storm Detachment under Staff Chief Röhm.<sup>38</sup> Otherwise, however, the formal independence of the judiciary has not been infringed. Independence, of course, does not mean aloofness from National Socialist ideology. Ideological homogeneity is presupposed also in the administration of justice. In construing and applying the law the courts must predicate their decisions on "the program of the Party, *My Battle*, officially recognized juridical and extra-juridical literature, but not on precedents of the National Supreme Court of Justice prior to 1933 in so far as they conflict with the National Socialist ideology, nor on commentaries written by Jewish authors."<sup>39</sup> Existing legislation, on the other hand, even if not yet adjusted to the "aims of the Movement," cannot simply be treated as void; reasons of expediency necessitate the enforcement of the law as it stands. In order to adapt the judicial branch to the needs of the hour, political crimes have been reserved for the exclusive jurisdiction of a new People's Court manned primarily with Party functionaries and representatives of the army. This court was obviously the offshoot of the Reichstag trial in which the



National Supreme Court of Justice failed to convict the former parliamentary chairman of the Communist Party. No one can say that the People's Court does not live up to the expectations of its inaugurators.

(e) As "the plan and will of the Leader" give validity to Reichstag statutes, "cabinet acts," ordinances, and any measure of rule-setting intent, as they pervade the executive branch from top to bottom, as they guide juridical construction—so it is "the plan and will of the Leader" which times and calls forth the demonstrations of popular approval. "In the German *Führerstaat* the plebiscitary features are organically connected with political Leadership. Only the Leader can order a plebiscite."<sup>40</sup> "The meaning of such a consultation of the people by the Leader is to bring to the fore again and again the manifestation of the Leader's confidence in the people as his followers in connection with important political decisions."<sup>41</sup> While in the one-party state elections have lost "all their former significance"<sup>42</sup> as a choice between competitors, programs, or ideas, they share the principal function of plebiscites as confirmations of leadership. Naturally, emphasis is not on letting the people itself render a decision on specific measures, for only the Leader "knows the right direction." The plebiscite rather revives the Germanic *Ting*, where the freemen acclaimed their leader. But our mechanized age distrusts spontaneity. As Dr. Robert Ley, Staff Chief of the Political Organization of the National Socialist Party, recently said, "The people, which is always a child and like a child needs points of orientation, cannot afford to be without the political elite of the Party."<sup>43</sup>

### 3. PARTY, PEOPLE, AND STATE

The Reconstruction Act clothed the "cabinet" with constituent power: the "cabinet" obtained the mandate to "create new constitutional law." While it has done so, as in the Succession Act, it has not yet promulgated a new constitution. In the meantime the National Socialist ideology, in so far as it has found concrete expression, represents the "living constitution." This constitution does not center on a bill of rights. In fact, ever since the main guaranties of liberty were "temporarily suspended" after the Reichstag fire, the concept of individual rights has undergone rapid evaporation. The "living con-



stitution" knows civic duties, not individual rights. Emergency government recoils from narrowing the range of duties through clear-cut legal definition. Their scope is broadly outlined in the general behavior patterns to which the "new attitude" aspires. It is the cardinal task of the National Socialist Party to shape the "new attitude."

*The Party—Generator of Energies*

Since December, 1933, the Party has been a "corporate body of public law." Conceptually, all corporate bodies of public law are subordinated to the state. Actually, however, the Party "is in relation to the state a closed and impermeable totality."<sup>44</sup> Exclaimed Hitler at the Party Congress in 1934, "Not the state commands us, but we command the state! Not the state has created us, but we ourselves created our state!"<sup>45</sup> Correspondingly, the Führerstaat doctrine is determined not to be befuddled by legislative terminology. Whether "corporate body" or not, the Party, as a modern Atlas, "supports state and people."<sup>46</sup> It "forms people and state to the unity of the German nation along the lines of the National Socialist idea."<sup>47</sup> But the National Socialist idea is not to be desecrated through exhaustive rational exploration. No ideological myth survives vivisection with what Dostoevski called the "learned knife." The National Socialist idea must hence be kept in the twilight which prevails at places of worship. It is the Party, not the state, that conducts the service.

To the Party, then, falls the task of "generating always anew the ideological energies of the Third Reich from the substance of the National Socialist idea, of instilling them into the national community with the aid of propaganda and education, and of infusing them into the governmental body through a comprehensive system of offices interlocking Party and state."<sup>48</sup> This effort presupposes a self-rejuvenescent organism: the Movement. But it also presupposes a huge structure of hierarchically organized permanent agencies. Both Movement and hierarchy have not yet found their synthesis. That their common master is no longer the roving captain of a militant opposition, but carries full governmental responsibility as "head of the state," tends to strengthen the hierarchical aspects rather than the creative mobility of the "cells of the Movement." Indeed, the organiza-



tional apparatus of the Party is today of awe-inspiring magnitude. On the other hand, the Movement is keenly alive to the very real threat of "over-bureaucratization." It is taken as an encouraging sign that "the whole law of the Movement" is "still constantly in flux." For "should the Movement become inflexible, immobile, a status, it would no longer be a movement, and would have lost its dynamic character."<sup>49</sup>

It is primarily due to the inevitable rise of the hierarchical element within the Movement that the potentialities of dynamic action are shrinking. In the late summer of 1935 dynamic action found itself confined to the racial issue, only to provoke public disavowal from above. Commented the Regional Head of the Party in East Hanover: "Unfortunately, things have recently happened which the Leader has been unable to approve of, and which could not be expected to meet his approval. Doubtless the Jewish question has not yet ceased to exist in Germany. Further legislative measures will make it impossible for the Jews to regain influence and to satisfy their lust of power. But any individual actions against Jews are once and for all forbidden. If a Jew commits an offense, he must be handed over to the governmental authorities."<sup>50</sup> And the district headquarters of the Party in Fulda added: "The district organization considers it its duty to disclaim publicly any part in those measures carried out by uncontrollable elements in the intention to do harm to, or sabotage, the educational campaign of the National Socialist Party. The police is instructed to apply all means against any further activities of such elements and to maintain order rigorously, regardless of the persons involved or their party membership."<sup>51</sup> There is only one Party.

### *Organization of the Party*

In fourteen years of relentless campaigning the Party won a million and a half members. In the first three months of the "Resurgence" no less than two million new members joined in a wild scramble. The "Old Guard" looked upon these newcomers with mixed feelings, and for good reasons. If the Party were to be the "core of the National Socialist Reich,"<sup>52</sup> the unnatural dilation could easily injure its vital function. Lines of demarcation were drawn within the organization. Low membership-



card numbers began to carry vast prestige. Nevertheless, the "trusted fighters" of bygone days were soon to realize that "National Socialism as the expression of the opposition period belongs already to history."<sup>53</sup> In the meantime the Party has closed its gates to the older generation. Recruitment is restricted to worthy members of the Hitler Youth and the corresponding Union of German Girls. The former must have reached the age of eighteen, the latter the age of twenty-one—at least four years of continuous membership in their respective organizations is required. They must also comply with the general rule guiding admissions—"Aryan" pedigree back to 1800.

The Party proper maintains general headquarters in Munich, the "capital of the Movement," and a number of important central agencies in Berlin. Its political organization corresponds to that of the unitary state, with strict subordination of regional, district, and local subdivisions. In its top structure the Party resembles a "civil cabinet"; jurisdictions are divided along functional lines, as defense, foreign affairs, justice, cultural policies, racial policies, press, civil service matters, local government. Not included in the Party proper, but integral parts of it are: the Brown Shirt Storm Detachment, since the "purge" of 1934 virtually on political probation and considerably reduced from its former size; the black-uniformed Special Guard, a crack formation of carefully selected "Loyalists," whose chief is also the head of the dreaded Secret State Police; the National Socialist Automobile Corps; the Hitler Youth, including the Union of German Girls; the National Socialist Women's Association; the National Socialist German Students' Association; and the National Socialist University Teachers' Association. In addition there are the following Affiliated Organizations: the National Socialist German Medical Association; the Association of National Socialist German Jurists, headed by Reich Minister Dr. Hans Frank, cabinet member without portfolio; the National Socialist Teachers' Association; the National Socialist Association of German Engineers; the National Association of German Civil Servants; the National Socialist Welfare Organization; the National Socialist Organization of Disabled Veterans; and the German Labor Front, including the National Socialist Organization *Strength through Joy*, both charges of Dr. Ley, Staff Chief of the Political Organization of the Party. As the Labor Front



has absorbed all former trade unions, as "white collar" employees individually and employers collectively also belong to it, and as the separate professional associations just enumerated are practically all-embracing, except for the Jewish population, few Germans indeed are not at least nominally connected with the Party.

Functionally the work of the Party may be divided into political, administrative, and judicial tasks. In the realm of political decisions the bulk of constant readjustment and of supervision is entrusted to Rudolf Hess, the Leader's shadow and officially his Substitute in Party Affairs. Administrative management, particularly the handling of equipment supplies from uniforms to badges, of other Party property, and of the Party funds accumulating primarily through membership dues and semivoluntary outside contributions, is concentrated under Party Treasurer Schwarz, directly responsible to the Leader. All Party officers, regional, district, and local, through whose hands Party money passes, are under the Treasurer's jurisdiction. In addition, as a prime means of workaday integration, all Affiliated Organizations are financially accountable to him and subject to unannounced revision. As the "core of the National Socialist Reich," the Party enjoys far-reaching tax exemptions, which apply also to all its Integral Formations, some Affiliated Organizations, and "approved" civic associations such as the National Air Defense, the German Aviation Union, which maintains its own training camps, the Technical Emergency Service, and the National Federation for *Deutschtum* Abroad. In order to place the construction and maintenance of all establishments for the annual Party Congress in Nuremberg on an adequate financial basis, a special tax-exempt public corporation has been formed by cabinet act. Members of the corporation are the Party, the German Reich, the state of Bavaria, and the city of Nuremberg. It may be assumed that the larger part of the burden will rest on the Reich's mighty shoulders. Finally, as to the judicial functions of the Party, throughout the country a comprehensive system of Party courts has been set up along the lines of Party subdivisions, with the Supreme Party Court in Munich at the top. In a recent decision this court laid down the rule that any Party member serving as counsel for a Jew against a "German citizen" must be expelled from the Party. But even neglect to



inform their local agency "within three days" of a change of address is a "grave offense" for Party members.

Severe penalties threaten those who should dare "in public to insult or degrade maliciously and intentionally the National Socialist Party, its Integral Formations, its emblems, its standards or banners, and its badges or decorations." In the same way, even the abuse or unauthorized display of Party symbols on belt buckles and sleeve stripes is subject to drastic punishment. Of course such prohibitions, though indispensable palisades guarding the generating plant of the National Socialist ideology, accentuate division rather than unity. Yet, the more visibly the "elite of leadership" is set off from the rank and file of the citizenry, the greater is its "radiating" power.

### *Party and People*

"Freedom, in the spiritual realm as well as in the manifestations of social life, is the soil in which the higher conception of civic allegiance germinates; legislation which does not lose sight of the latter will leave widest possible scope for the former, even at the risk of causing a lesser degree of uniform tranquillity and quietude and of making government a little more difficult and arduous." When in 1805 Johann Gottlieb Fichte, addressing the "German nation," thus enunciated an ever-valid maxim of government,<sup>54</sup> he anticipated the spirit of Prussia's reform era, but not the reality of the Third Reich. National Socialism, viewing the fourteen years of the republic as a downward slide, is pressed for time to make up the loss. Inspired by its own fervent self-confidence, it is eager to reorganize the phalanx of the German people with the least delay. At the command "Attention!" talking must cease in the ranks. Uproarious applause greeted the Leader at the Party Congress in 1935 when he announced with raised voice, "We determine our way, and we time our pace, but no one any longer determines the goal: the goal is set for us." And he added, "Not reason has salvaged Germany from distress, but your faith."

As leadership, in the words of Dr. Goebbels, includes "doing the right thing against the masses,"<sup>55</sup> the chief purpose of the Party's Affiliated Organizations, particularly the Labor Front, is patently not to serve as a "Guild Parliament." Any such thought is ruled out by the simple observation that the Affiliated



Organizations do not elect their officers, but are blessed with them by Destiny, and during the pleasure of Destiny. As Affiliated Organizations, however, they are not ineffective transmitters of the approved faith. This very function, though controlled by decree from above, confers honor on their members. In a recent resolution of the German Statistical Association, for instance, the statisticians, too, somewhat belatedly expressed their eagerness to be "not merely contemporaries of the momentous events of the present time, but comrades-in-arms for the common cause."<sup>66</sup> A good example of what can be accomplished through the channels of Affiliated Organizations is the following order of the helmsman of the Association of National Socialist German Jurists: "Members of the Association, particularly university professors, need the consent of their regional head to render legal opinions of political character or of political effect, especially on the Jewish legislation, protective custody, etc."<sup>67</sup> In one sentence strict uniformity of interpretation is achieved.

But it would be superficial to overlook the fact that the Affiliated Organizations, particularly the Labor Front, conduct impulses from below to above as they do from above to below. At the Party Congress in 1935 Hitler appropriately epitomized this phenomenon by proclaiming, "The Leader is the Party, and the Party is the Leader." The statement, while fitting the occasion, is a little too narrow. Leadership, as a reciprocal relationship, involves adjustment of the Leader as it does of the followers. Moreover, it operates on the basis of reality, political and economic. The economic conditions which, owing to the lack of psychological reserves, broke the republic, have certainly not changed for the better. The new "freedom," in spite of huge government spending, cannot fail to cause inroads into the standard of living. But as "the goal is set for us," the vital question of adequate distribution of the burden arises. National Socialism has indicated that it is not unaware of the importance of assuring Labor of what is Labor's. Closer analysis must be reserved for another chapter. Suffice it to say that the Organization *Strength through Joy* has taken charge of the recreational aspects of trade-unionism, true to the precedent established by Social Democracy, and on a larger and more effective scale. At the Party Congress of 1935 the Labor Front was treated



to the spectacle of being addressed by Dr. Hjalmar Schacht, president of the Reich Bank and acting Minister of Commerce, who felt impelled to denounce the "stiff collar" snobbery under the Weimar system, of which most of his Labor audience might have considered no one more representative than Dr. Schacht himself.

Whereas National Socialist attorneys are ousted from the Party should they accept a brief from a Jewish client against an "Aryan," they are on the other hand urged never to refuse their assistance as trial lawyers to accused Communists. This differentiation makes clear that Communists are citizens, though "misled," while Jews are not citizens at all. Dealing with an "unbalanced psychopath," the Superior Eugenics Court in Kiel recently included in its decision the following pertinent considerations: "A third complex of ideas relates to his opinions on the Jews. He asserts that he has read the Talmud and the *Protocols of the Elders of Zion*, and at an early date gained the conviction that the Jews are responsible for all mischief on earth; hence in so far as non-Jews are bad, they have grown so through infection with Jewish spirit. It is strange that he trusts in these matters his own infallible judgment, and that his ideas are supported by a distinctly increased self-esteem."<sup>58</sup> It is precisely this "complex of ideas" which underlies the racial program of the National Socialist Party.

While "Nordicism" with its emphasis on the world mission of the "Nordic" race lends itself as admirably to group stimulation as did the mouthful of rum before the storm command in the trenches, it is not simply the reverse side of outright anti-Semitism. But they overlap to a certain extent.<sup>59</sup> A list of literature<sup>60</sup> recommended for the spread of racial consciousness in the German schools, for instance, includes such a variety of authors as Count Joseph Arthur de Gobineau; Madison Grant; Lothrop Stoddard; and Houston Stewart Chamberlain, Richard Wagner's English-born son-in-law, who after listening to Hitler for an evening (October, 1923) thanked him, in a letter written the next day, for the first good sleep in years. "Nordicism" is not primarily the product of German home cookery. But the fact that Richard Wagner is today celebrated as the "champion of the National Socialist ideology," and his son-in-law as the "wise prophet and adorer of our Leader,"<sup>61</sup> points



to the fluent borderline between "Nordicism" and plain Jew baiting. Friedrich Nietzsche, who ridiculed the "anti-Jewish folly," added in a more serious vein, "I have not yet met a German who is fond of the Jews." To him this lack of "fondness" seemed to prove how widely accepted was the diagnosis that "Germany has amply enough Jews, that the German stomach, the German blood, has trouble, and will have trouble for a long time, to get over this quantity of Jews."<sup>62</sup> That was before the close of the last century. The republic, in contrast to the *Kaiserreich*, ignored the "anti-Jewish folly" altogether, and acted as if it did not exist. But as the republic also ignored the need of effective adjustment of deep-rooted, almost instinctive reactions, whether conclusively rationalized or not, it unwittingly strengthened rather than weakened anti-Semitism.

Sweeping racial discrimination began in the early stages of the National Revolution. Public offices were closed to "non-Aryans." They were gradually weeded out from the civil service and university faculties, partly eliminated from the legal and the medical professions, and restricted to a quota in the system of higher education. The use of the "scientifically unsound" term "non-Aryan" in this legislation is due to the fact that already in prewar times the term was "commonly accepted"<sup>63</sup> in Germany as denoting the Jew. Originally, discrimination was not carried into the sphere of national economy. Here "freedom" involved a more cautious procedure. But as economic conditions grew tense and the need for expert stewardship blocked romanticism and experimentation in wide fields, "dynamic action" was of necessity sidetracked to the Jewish issue. The outrages of "uncontrollable elements" in the summer of 1935 spoke an eloquent language. Already early in August a high National Socialist official forecast in detail the September legislation by stating publicly that the Party program could not be considered carried out as long as interracial marriage and sexual intercourse were not penalized, "German" housemaids barred from Jewish households, Jews excluded from managerial positions, and Jewish children confined to separate schools of their own.<sup>64</sup> Yielding to the necessity of quick action, the Leader elated the Party Congress by ordering the Reichstag to Nuremberg, where it promptly acclaimed legislative proposals limited to symbols and scape-



goats: the swastika was pronounced the national flag, and the Jewish population subjected to thoroughgoing segregation. Fully reduced to "guest" status, the "non-Aryans" are consequently deprived of the right to vote. But with the alternative between "dynamic action" and a modernized form of ghetto life, even the *London Times* expressed its preference for segregation.

What segregation means in practical terms is well illustrated by a recent resolution of the city council of Schotten, Upper Hesse. The resolution reads: "(1) Jews will henceforth be prohibited from moving to Schotten. (2) The sale of real estate and houses to Jews is forbidden. (3) Jews are excluded from the use of all municipal establishments such as the hospital, the cattle scales, etc. (4) Jews are not admitted to any municipal auction—hay, lumber, fruit, etc. (5) Those fellow-citizens who have business dealings or maintain friendly relations with Jews, will no longer receive municipal contracts or any kind of relief."<sup>66</sup> The trolley cars in Magdeburg began to display a poster reading "Jews are not desired here."<sup>66</sup> The mayor of Coburg instructed all civil servants and municipal workers to sever any relationships with Jews—an order valid also for their spouses and children.<sup>67</sup> "Shame Boards" installed by Party agencies adorn the streets, branding "traitors" by inclusion of their names under the heading "Fellow-citizens who maintain friendly relations with Jews or buy in Jewish stores." The National Railroad Administration allots space for these public rolls of dishonor in the station halls.<sup>68</sup> Recently the District Court in Frankfort on the Oder refused to grant an injunction for the elimination of a name from a Shame Board on the ground that allegiance to "the people" supersedes allegiance to a Jewish friend.<sup>69</sup>

### *Party and State*

None other than Alfred Rosenberg, high priest of the National Socialist ideology, has heralded the state as its "mightiest and manliest tool."<sup>70</sup> He may have thought of the Propaganda Ministry's central and regional apparatus, stretching down into every editorial office in the country; or of the new Reich Ministry of Education under Dr. Bernhard Rust, who in the unitary state is the undisputed master over the curriculum and personnel of all German universities as well as every village



school, and under whose inspiring guidance even mathematics recognizes its specific "service to racial erudition."<sup>71</sup> But it is more probable that *Leiter* Rosenberg referred in general to the towering structure of the executive branch, to its tradition of devotion and expertness in transforming principles into modes of civil life, to its innate sense of discipline and obedience. In Germany's bureaucracy the Leader found an instrument which excels in homogeneity the Party itself. But was it the right kind of homogeneity?

The Third Reich's answer to this question is implied in its eagerness to "infuse ideological energies" into the executive branch "through a comprehensive system of offices interlocking Party and state." Apart from the Leader himself, it is his Substitute in Party Affairs who as a cabinet member has to "guarantee the closest cooperation of the Party agencies with the administrative departments." He must be consulted on all legislative proposals emerging from the Reich ministries before they are submitted to the cabinet. All administrative appointments and promotions which the Leader has reserved for his own decision have to pass through his hands. In the regional sphere the eleven Reichsstatthalter have not ceased to attend to their Party offices, whence they were drafted. The same is true of most state cabinet members. In the domain of local government few mayors have survived the gale of the "Resurgence." Many of the new appointees combine in their persons public and Party offices. Finally, in accordance with the Local Government Act of January, 1935, a "Party delegate" is assigned to each county and to each municipality in order to facilitate "coordination."

But there are still other means by which ideological integration is accomplished. A recent decree of the National Minister of the Interior, applicable throughout the country and in all jurisdictions, conferred preference in promotion upon those civil servants "who have distinguished themselves in the struggle for Resurgence and give the guaranty that they will continue to set an example and educate others in the spirit of the National Socialist Movement." It is, however, significant for the Minister's realistic appraisal of administrative efficiency that such promotions are to be granted only if candidates "in age, administrative achievements, and ability fully comply with the require-



ments of the higher position." Submission of doubtful cases to the regional Party head is recommended. While "trusted fighters" are promoted, "sabotage" is counteracted by no less effective devices. In August, 1935, a public official stationed in Wiesbaden found himself abruptly transferred into "protective custody." His superior commented, "It is unworthy of a civil servant to speak of National Socialism and Communism in the same breath and to point to certain features which both have allegedly in common."<sup>72</sup>

In the Eighth Book of his *Istorie Fiorentine*, Niccolò Machiavelli wound up an investigation into the political ethics of his day with the poignant observation: *E così la forza e la necessità, non le scritture e gli obblighi, fa osservare à i Principe la fede*. The *Frankfurter Zeitung* unwittingly came close to plagiarizing Machiavelli when some months ago it stated in a matter-of-fact style that "all means of power are combined in the National Socialist government to such a degree as was hardly ever the case in any other country on earth"; and that the "exercise of this power finds no limitations at all, except those set by nature to every power."<sup>73</sup> But the Prince was satisfied to keep his *Signoria*, while the Leader strives toward the goal "set for us."

#### NOTES

1. Gerhard Anschütz, *Die Verfassung des Deutschen Reichs*, 14th ed., p. 242, Berlin, 1933. This standard work on the Weimar constitution has not lost its significance as an outstanding introduction to governmental structure and political theory during the republican era and to the background of National Socialism's formative period. It is reviewed by the present writer, *American Political Science Review*, vol. 27, pp. 646-647, 1933.
2. Frederick F. Blachly and Miriam E. Oatman, *The Government and Administration of Germany*, p. 99, Baltimore, 1928. Dealing primarily with the organizational setup of national, state, and local government and administration under the Weimar constitution, the authors give the most detailed account of the subject published in English. The book contains an extensive bibliography of the German literature up to about 1927. It should be noted, however, that since that time a considerable number of relevant new publications have appeared. These are included in the bibliographical notes of Anschütz's volume mentioned in note 1.
3. Carl Schmitt, *Der Hüter der Verfassung*, p. 137, Tübingen, 1931: "According to the positive law of the Weimar constitution, the position of the Reich president, elected by the entire people, can be conceived



- only on the basis of a further elaborated doctrine of a neutral, mediating, regulating and conserving power."
4. Fritz Morstein Marx, *Zeitschrift für die gesamte Staatswissenschaft*, vol. 92, p. 261, 1932.
  5. Carl J. Friedrich, *American Political Science Review*, vol. 27, p. 201, 1933. In his critical assessment of "presidential government," the author places due emphasis on the traditional strength of the executive branch.
  6. Lindsay Rogers, *Crisis Government*, p. 72, New York, 1934.
  7. The latter was asserted by Carl Schmitt, *op. cit.* in note 3, p. 125.
  8. Dissent was negligible. For the opposing view, favoring more elaborate judicial control of emergency decrees, see Fritz Morstein Marx, *Archiv des öffentlichen Rechts* (new series), vol. 16, pp. 288 ff., 1929.
  9. H. Pohl, *Handbuch des deutschen Staatsrechts*, vol. I, p. 502, Tübingen, 1930. The two-volume *Handbuch* (vol. II: 1932) gives an excellent survey of German constitutional law and theory under the republican form of government.
  10. Reich ordinance of Dec. 5, 1933 (*Reichsgesetzblatt I*, p. 1021).
  11. Dr. Goebbels, National Minister of Popular Enlightenment and Propaganda, *Hamburger Fremdenblatt*, no. 78, Mar. 20, 1934 (evening edition).
  12. Franz W. Jerusalem, *Der Staat*, p. 293, Jena, 1935.
  13. Otto Koellreutter, *Deutsches Verfassungsrecht*, p. 142, Berlin, 1935. This comparatively brief (199 pp.) survey of political ideology and governmental organization in the Third Reich, written in untechnical language, is probably the most useful introduction yet available. The author, then professor at the University of Jena, identified himself with the National Socialist cause long before Hitler's rise to power, which at that time involved considerable personal risk. For a collection of the Third Reich's most important laws and ordinances see James K. Pollock and Harlow J. Heneman, *The Hitler Decrees*, 2d ed., Ann Arbor, 1934.
  14. Reuss, *Juristische Wochenschrift*, vol. 64, p. 2314, 1935.
  15. Hans Schmidt-Leonhardt, *Deutsches Recht* (central organ of the Association of National Socialist German Jurists), vol. 5, p. 340, 1935.
  16. Jerusalem, *op. cit.* in note 12, p. 293.
  17. Koellreutter, *op. cit.*, p. 128.
  18. Preamble to the Reich Local Government Act of Jan. 30, 1935 (*Reichsgesetzblatt I*, p. 49).
  19. Reichsstatthalter and Regional Party Head Sprenger, *Frankfurter Zeitung*, nos. 458-459, Sept. 8, 1935.
  20. Koellreutter, *op. cit.*, p. 146.
  21. Reich Minister Dr. Frank, *Mitteilungsblatt des Bundes National-Sozialistischer Deutscher Juristen und des Reichsrechtsamts der NSDAP*, no. 1, p. 9, 1935.
  22. Koellreutter, *op. cit.*, p. 143.
  23. Adolf Hitler, *Mein Kampf*, 22d ed., p. 364, Munich, 1933.
  24. This thesis was first elaborated by Carl Schmitt, *Staat Bewegung, Volk*, Hamburg, 1933. See also Werner Dräger, *Primat des Volkes?* Berlin, 1935.



25. Reinhard Höhn, *Der individualistische Staatsbegriff und die juristische Staatsperson*, p. 227, Berlin, 1935.
26. Bung, *Deutsches Recht*, vol. 5, p. 260, 1935.
27. Reinhard Höhn, *Deutsches Recht*, vol. 5, p. 300, 1935. See also Ernst Rudolf Huber, *Wesen und Inhalt der politischen Verfassung*, Hamburg, 1935.
28. Otto Koellreutter, *Grundriss der allgemeinen Staatslehre*, p. 168, Tübingen, 1933. The book is reviewed by the present writer, *American Political Science Review*, vol. 28, pp. 932 ff., 1934.
29. Schmidt-Leonhardt, *op. cit.*, p. 341.
30. *Ibid.*
31. Koellreutter, *op. cit.* in note 28, p. 66.
32. These results were not achieved by dishonest counting; Frederick L. Schuman, *The Nazi Dictatorship*, p. 262, New York, 1935.
33. Dr. Rothenberger, Chief President of the Hanseatic Superior Court and Regional Head of the Association of National Socialist German Jurists, *Hamburger Fremdenblatt*, no. 272, Oct. 1, 1935 (evening edition).
34. *Ibid.*
35. Koellreutter, *op. cit.* in note 13, p. 57.
36. Rothenberger, *loc. cit.* in note 33.
37. Höhn, *op. cit.* in note 27, p. 298.
38. Carl Schmitt, *Deutsche Juristen-Zeitung*, vol. 39, pp. 945 ff., 1934; Jerusalem, *op. cit.* in note 12, p. 309.
39. Rothenberger, *loc. cit.* in note 33.
40. Koellreutter, *op. cit.* in note 13, p. 146.
41. *Ibid.*
42. *Ibid.*, p. 103.
43. *Frankfurter Zeitung*, nos. 549-550, Oct. 27, 1935.
44. Ernst Rudolf Huber, *Deutsches Recht*, vol. 5, p. 311, 1935.
45. *Der Kongress zu Nürnberg 1934*, 2d ed., p. 162, Munich, 1935.
46. Schmitt, *op. cit.* in note 24, p. 13.
47. Gottfried Neesse, *Die Nationalsozialistische Deutsche Arbeiterpartei*, p. 156, Stuttgart, 1935.
48. Reuss, *op. cit.* in note 14, p. 2319.
49. Anton Lingg, *Deutsches Recht*, vol. 5, p. 393, 1935.
50. *Frankfurter Zeitung*, nos. 445-446, Sept. 1, 1935.
51. *Ibid.*
52. Stuckart, *Deutsches Recht*, vol. 5, p. 385, 1935.
53. Frank, *Mitteilungsblatt des Bundes National-Sozialistischer Deutscher Juristen und des Reichsrechtsamts der NSDAP*, no. 2, p. 37, 1935.
54. Johann Gottlieb Fichte, *Reden an die deutsche Nation*, VIII. Reclam ed., p. 119, Leipzig, 1902.
55. *Mitteilungsblatt des Bundes National-Sozialistischer Deutscher Juristen und des Reichsrechtsamts der NSDAP*, no. 4, p. 121, 1935.
56. *Frankfurter Zeitung*, nos. 458-459, Sept. 8, 1935.
57. *Mitteilungsblatt des Bundes National-Sozialistischer Deutscher Juristen und des Reichsrechtsamts der NSDAP*, no. 4, p. 98, 1935.



58. *Juristische Wochenschrift*, vol. 64, p. 2500, 1935.
59. See also Frederick L. Schuman, *American Political Science Review*, vol. 28, pp. 210 ff., 1934.
60. Wilhelm Müller, *Reichszeitung der deutschen Erzieher*, no. 6, pp. 8 ff., 1935.
61. *Reichszeitung der deutschen Erzieher*, no. 8, p. 2, 1935.
62. Friedrich Nietzsche, *Jenseits von Gut und Böse*, part VIII, no. 251, Leipzig, ed. 1899.
63. Ruttke, *Juristische Wochenschrift*, vol. 64, p. 1374, 1935.
64. Dr. Schultze, *Staatskommissar für das Gesundheitswesen*, in a lecture before the German Academy in Munich; *Frankfurter Zeitung, Wochenblatt*, no. 33, Aug. 18, 1935.
65. *Ibid.*, no. 36, Sept. 8, 1935.
66. *Frankfurter Zeitung*, no. 432-433, Aug. 25, 1935.
67. *Ibid.*, no. 419-420, Aug. 18, 1935.
68. *Ibid.*, no. 549-550, Oct. 27, 1935.
69. *Ibid.*
70. *Völkischer Beobachter*, no. 9, Jan. 9, 1934.
71. *Reichszeitung der deutschen Erzieher*, no. 8, pp. 6 ff., 1935.
72. *Frankfurter Zeitung*, no. 445-446, Sept. 1, 1935.
73. *Frankfurter Zeitung, Wochenblatt*, no. 32, Aug. 11, 1935.



### *Chapter III*

## THE PROCESS OF GOVERNMENT IN THE THIRD REICH

The blueprint of authority on which modern German emergency government is modeled displays two distinct features: the concentration of all power in the hands of the Leader in whose person the means of governmental and of extragovernmental adjustment, state and Party, are combined; and the deliberate elimination of all those statutory confines which qualify the exercise of power. "Plan and will of the Leader" is tantamount to free political discretion without any bounds whatever. The triumphal exclusiveness of lawmaking by decree, whether or not formally acclaimed by the Reichstag, is indicative of the actual scope of discretion. It is true Hitler himself has never claimed infallibility. Speaking of his closest political advisers in the Party "elite" and the "staff of experts" in the ministerial bureaucracy, he once told the Associated Press representative in Berlin, "I do not want them simply to O. K. everything. They are worthless to me if they do not criticize." "Plan and will of the Leader" in the formative stage are forced through the filters of necessity and expediency, of political and technical considerations. Gottfried Feder, author of National Socialism's economic "catechism," a few years ago boasted of the Party's determination never to adjust its "unalterable" program to hard facts, but instead to adjust hard facts to the program. Since early in 1935 he has been enjoying the leisure of "temporary retirement," leaving the field to such a tested career man of the republican era as is Dr. Schacht.

But the discretionary basis of lawmaking in the Third Reich does not prohibit the legal rule from developing into a static element which of necessity delimits free discretion in the sphere of enforcement. Emergency government tries to counteract this undesired effect in various ways. First of all, legislation is largely confined to the purpose of realizing accountability, civic



or hierarchical; the very purpose of the rule renders it virtually impossible for the citizen to seek refuge behind it in defense of "rights." The "precedence of the commonwealth over individual fate" admits of no such rights. Consequently, political decisions, particularly measures of the secret state police, cannot be appealed to the courts. Second, emphasis is placed on circumscribing accountability in broadest terms, in general clauses. It is in line with this trend that in the summer of 1935 the Criminal Code was amended so as to penalize also acts not mentioned in it which "deserve punishment according to the fundamental idea underlying a provision of criminal law, or according to sound popular sentiment." And third, considerable effort is made to discourage the clarification of rules beyond their immediate purpose of enforcing accountability. "Instead of a theoretically unlimited freedom qualified by police prohibitions which again and again offended the law-abiding citizen because of their self-evident nature, we now have a commandment to which the law-abiding citizen lives up as the rule of his own conscience, while it points out the lawbreaker with inexorable severity so that he is simply incapable of continuing his activity. In this way each single fellow-citizen will acquire an understanding of the law which after a certain transitional period will render it superfluous to lay it down in normative and abstract legal rules. It would be a ridiculous game of mental acrobatics to give these rules a legal content through inductive or deductive method, to construe them, to infuse into them a different meaning, and thus finally to facilitate their abuse by the unscrupulous."<sup>1</sup>

As the "great harmonizer of dissonances" the state may seek its aim either in solving or in preventing conflicts, political, economic, or social. If it is true that the last causes of the emergency which the Third Reich tries to overcome by "freedom" are of an external character, the National Socialist government must consequently see its first task in preventing intramural conflict. Only a people "permeated by one national will" has a reasonable chance to tackle successfully the external causes of the national emergency. This hypothesis, verified through historical precedent, explains the Leader's persistence in making the "creed which is essentially that of a soldier" universal throughout the country. Conflict, on scrutiny, is merely the reverse side of mutual maladjustment, whether or not



rationalized in terms of class struggle, social stratification, or discrepancy in income levels. But the more or less effective objectification of criteria of inequality should not detract from the simple truth that adjustment is primarily, if not exclusively, a spiritual process. Man can be induced to accept any fate if that fate appears to satisfy his innate desire for a dignified status within the scale of social functions. The pay check is probably the least conclusive evidence of such a status. Hitler's firm grip on the rising generations of new voters was principally due to the fact that membership in the Storm Detachment magically transformed desperate and aimless young unemployed into the vanguard of a new hope, of a greater Germany. This status involved no material relief from their plight, yet it gave them direction, purpose, and priority. It is therefore not the result of daydreaming that the Third Reich, in view of its economic limitations, begins the elimination of intramural conflict by "setting the minds right." Nothing must enter them which "contradicts" the purport of the National Socialist ideology.

It would be a sheer waste of time and space to dwell upon the potentialities of propaganda such as lie in a strictly centralized system of elementary and higher education, in Party-controlled institutions such as the virtually all-inclusive Hitler Youth, which monopolizes organized youth activities, or in the Affiliated Organizations of the Party. The recent foundation of a National Institute for Modern History, headed by a "trusted fighter of the Movement," the organization in 1934 of obligatory summer camps for teachers in order to test and rejuvenate their "personalities," the casual hint that "Prussia's struggle for Freedom at the time of Napoleon's domination resembles in many respects the German Movement for Freedom 125 years later,"<sup>2</sup> all this requires no further comment. Indeed, the new Germany's "millennial destiny" would be no more than wishful thinking, should National Socialism fail to inculcate its faith into the school child. As to the present, the greatest ambition of the Third Reich is not merely to silence its former domestic foes, but to make them sing its praises.

#### 1. PROPAGANDA—THE TECHNIQUE OF UNANIMITY

The creation of a National Ministry of Popular Enlightenment and Propaganda in the hour of National Socialism's "conquest of



the state" is in itself a clear indication of Hitler's reluctance to rely primarily on the fists of his Brown Shirt forces or the display of governmental power. With, at worst, widespread benevolent neutrality of the bourgeois vote, rapid decomposition of the Social Democratic Party, and German Communism torn between Moscow red tape and provincial diletterism, a policy of large-scale intimidation would have been entirely unwarranted. Oswald Spengler, in spite of his deep-rooted sympathy with the cause of National Resurgence, said all there was to say when he coolly remarked, "This was no victory, for the enemies were lacking."<sup>3</sup> To the mode of life of the average "law-abiding" citizen, secret police and concentration camps had negligible relevance. The latter-day historian will in all probability conclude that the establishment of concentration camps was as much a punitive measure as it was a precautionary one. After scores of bloody encounters with the forces of Marxism, Hitler's private army demanded a day of settlement, and they got it. That the camps were entrusted to the Storm Detachment, and that during the National Revolution even subordinate Party agencies were allowed wide latitude in inflicting the dreaded "protective custody" according to their own discretion, is ample evidence of the Storm Troopers' eagerness to do some missionary work in an unsophisticated fashion. Wrote the commander of the once famous Camp Oranienburg: "To conceal that some of the arrested had experienced in the meantime a not too gentle treatment would be foolish and also altogether inconceivable. Inconceivable in so far as such a treatment met an urgent necessity."<sup>4</sup>

Doubtless the eloquent mystery surrounding the concentration camps did more than anything else to discourage counteraction in those quarters which might have played with such an idea. At the same time, it induced the timid bystander to tiptoe to safety. Most men who do not mind braving a known danger weaken in the face of an undefined threat. Rumors alone told what was going on in concentration camps. Once confined to them, the prisoner was left to guess as to the length of his internment. Nevertheless, even in their rush days the concentration camps housed only a relatively small fraction of former partisans of Marxism. At present the concentration camps are no longer what they used to be. With few exceptions their original



inmates have been released. The succeeding shift of occupants included a considerable number of Party members who did not succeed in coping adequately with the "increased duties toward Leader, people, and state" saddled upon them by law. Although Communist underground agitation has not ceased, it fails to reach the masses; and in spite of the proverbial alertness of the secret police, the People's Court has not yet complained of overcrowded dockets. In the meantime "protective custody" has lost its former exclusive function and assumed the character of a general device for enforcing the unwritten code of National Socialist ethics, whatever the nature of the offense may be—a device used with equal fervor against unruly priests, "Aryan" mistresses of Jews, antisocial employers, "critics and naggers," or "saboteurs" in the civil service. In 1934, for instance, the plaintiff in a civil suit for the eviction of an unemployed and his family was taken into "protective custody." In the next few days no less than eight hundred similar suits were withdrawn in Berlin alone.

### *The Symbolism of Compliance*

To disperse enemies, however, does not create supporters. Support springs from identification. To bring about identification is the goal of propaganda. The technique of National Socialism's spiritual permeation of the electorate has aptly been described by Hitler himself, who once wrote, still at the beginning of his political career, that propaganda "must perennially address the masses alone."<sup>5</sup> Immediately after the National Revolution no one, of course, could expect widespread homogeneity of political thinking. But where minds did not yet meet, the victorious cause was satisfied to press for symbolic demonstrations of compliance. As a first step, the solid army of civil servants, national, state, and local, was ordered to greet the public as well as superiors and subordinates with raised arm in "German salute." Early in 1934 the Reich Minister of the Interior enlisted the cooperation of the national organizations of trade and industry in order to give the salute nation-wide application. It is, he said, "a task of popular enlightenment to introduce the German salute among all sections of the German people as the expression of national solidarity." To keep the symbol untarnished a further decree made it clear that the "salute of the



free man" was not befitting for inmates of penal institutions. Political indifference or even antagonism cannot always be traced easily. But whether Herr Nachbar on appropriate occasions stiffens his elbow or not, whether he substitutes "Heil Hitler" for "Good morning" is distinctly perceivable to everyone. If he did not, his lacking sense of "national solidarity" implicitly recommended him for special attention, if not for special treatment. If he did, he indicated at least outwardly his active support of the Government of National Concentration. Any civic midway position was thus rendered impossible.

The symbolism of compliance did not stop with the "German salute." During the week preceding the November elections of 1933 Herr Nachbar was bound to discover in his mail box a neatly printed handbill signed by the local Party agency furnishing this weighty advice: "It must be the duty of each fellow-citizen who professes his allegiance to our Leader, to demonstrate his loyalty by adorning his dwelling on election day with the symbol of the New Germany, the swastika flag. There must be no house which does not display the sign of National Socialist Germany." In addition, Herr Nachbar was supplied with governmental election posters to be exhibited at the windows of his apartment. One glance at a whole apartment building sufficed to identify the handful of non-compliers. About the same time, the first collections for the Winter Aid Fund, now an established institution, were under way. A Party functionary "covering" the block where Herr Nachbar was living would come around to ask for a contribution adequate in proportion to his income. If Herr Nachbar had any objections at all, he was politely urged to state them, so that the functionary could send in a proper report. If he preferred to pay, his response was compensated by an attractive Winter Aid seal, which he was instructed to paste on the door of his dwelling.

The symbolism of identification finds its counterpart in the symbolism of Leadership. The very singularity of the Leader operates as an assurance of guidance and security, as "men today are more anxious to be intelligently ordered and directed than to assert their own individuality."<sup>6</sup> If no one except the Leader, in the words of Rudolf Hess, can claim "always to be right," the term *Führer* itself assumes symbolic significance. In the fall of 1934 Dr. Ley tore a colorful feather from many



proud caps when he signed the following order: "I decree for the staff of the Political Organization that no directing Party officer, regardless of his position in the Party or one of the Affiliated Organizations, may use the word *Führer* for himself, whether in connection with another word or not. I decree for the German Labor Front, effective at once, that the title of *Führer* may no longer be applied to myself. My title is Staff Chief of the Political Organization." It is in line with this decree that the Leader's birthday was declared a national holiday, and that since the spring of 1935 his name and official title have been printed in the largest type in the Reich statute book wherever his signature appears.

*"Preaching the Faith"*

"No passion, no idea can find its final and strongest expression without the great symbol."<sup>7</sup> But symbol and idea must supplement each other. Propaganda is "victorious only as the tool of an idea. When the idea is desecrated, the whole artful edifice collapses."<sup>8</sup> National Socialism is not unmindful of this inherent limitation in "preaching the faith."<sup>9</sup> It is but consistent that Alfred Rosenberg recently insisted, "We must ignore the attempts to confront us each day with our inferiority and our sins. How much greater is it to believe in one's own value! If we had confronted ourselves each day with our sins at the beginning of our struggle, we would never have become the victors—in fact, we would never have really begun the struggle."<sup>10</sup> The Propaganda Ministry with its thirty-one regional agencies makes the German people believe "in its own value" by zealously administering the approved creed.

The organization plan of the Propaganda Ministry suggests that Dr. Goebbels as its nimble-witted head is far more than the publicity agent of the government. Whatever affects the mind of the people comes under his concurrent jurisdiction, whether the Treaty of Versailles or social politics, physical culture or youth literature, official ceremonies and demonstrations or opposing ideologies. As the vast clearing house of "popular enlightenment" the Ministry exercises control over the National Chamber of Culture, the German Academy of Politics, the Council for Commercial Advertising, the National Travel Committee, and the National Broadcasting Company. Special divisions



deal with the guidance of the press, the radio, the cinema, the theater, music, and art. Whatever the criterion of judgment, no one can find the author of the ministry's organization plan guilty of an omission.

The following semiofficial press release illustrates the scope of responsibility placed on Dr. Goebbels's frail shoulders: "At the request of the Reich Minister of Popular Enlightenment and Propaganda, Party and official agencies have recently subjected the two Berlin cabarets Katakombe and Tingeltangel to vigilance. In the course of these observations it became obvious that the original tendency of the cabarets, namely, to ridicule such aspects of contemporary life as do not harmonize with the feeling of the people through jokes, however biting, and thus to serve the cause of reconstruction to a certain degree, has gradually swung precisely into the opposite direction under the pressure of an attendance hostile to the state. An actress impersonating a prostitute, for instance, made light of the collections for the Winter Aid Fund, and agitation took place against collections in general; military and Party uniforms were calumniated, the organization of the Party made a laughing stock, and the conscript system slurred. A 100 per cent Jew, who as such enjoys only the rights of a guest in Germany, dared to make disparaging comments on political events in the Reich. Accordingly, the attendance consisted primarily of Jews and other state-negating elements. Since further activities of these enterprises could no longer be tolerated in the interest of the esteem of the National Socialist state, the Reich Minister of Popular Enlightenment and Propaganda has caused their closing through the Secret State Police. Several main participants have been arrested and questioned by the police; in connection herewith a number of premises were searched. When questioned some participants in the cabarets' political performances proved to be partly very superficially, partly not at all, informed about important establishments of the new state which they made the object of their sarcasm; they will have the opportunity to make up for this shortcoming in decent and solid camp work. On this occasion it may be stressed again that the new state cannot allow its institutions, which serve solely the people, to be abused by corroding and destructive as well as malicious criticism through a small but especially impudent and arrogant clique. National Socialism will not repeat the mistakes



of prewar Germany, which was unable to put a stop to the maligning of her great essential institutions, army, school, state, etc., and hence broke down in the hour of danger. National Socialism particularly deems it wholly unbearable that German affairs are ridiculed by Jews."

On the occasion of his appointment as Minister of Popular Enlightenment and Propaganda, Dr. Goebbels adroitly defined his task as the endeavor to achieve "one single public opinion." To this end a National Chamber of Culture was set up in the fall of 1933, which in the realm of cultural life fulfills the same functions as do the Affiliated Organizations of the Party in their proper spheres. The Chamber of Culture is the exclusive legitimate representation of all those professional associations whose members are engaged in literary production, newspaper work, broadcasting, the motion-picture industry, theatrical and musical performances, or the plastic arts, whether as employers or employees, free lances or independent artists. While technically not a subdivision of the Propaganda Ministry, the Chamber of Culture virtually operates as a governmental agency. Membership in the respective associations alone grants the right to professional activity. Such membership depends on "good behavior." It testifies to the effectiveness of the Chamber of Culture that the Reich cabinet could soon repeal the Act for the Protection of the Youth from Indecent and Worthless Literature adopted by the republic in 1926. The preamble of the repealing "cabinet act" reads: "The National Socialist state, in its struggle for the protection not only of the youth, but also of the whole people against injurious literature of any kind, possesses in the National Chamber of Culture Act, and especially in the establishments of the Chamber of Literature incorporated under it, a far more dependable instrument than had the Liberal state in its censorial agencies."

Instead of letting the secret police hunt for such publications as "are incompatible with the cultural aims of National Socialism," the Chamber of Culture merely supplies all bookstores through the professional association with black lists according to which their shelves and assortments must be purged of "injurious literature."<sup>11</sup> Penalty for neglect to carry out the order is the closing of the premises. While this scheme does not completely obstruct the flow of undercover trade in forbidden



fruit, the risk involved is too great to make commercial transactions on any large scale a profitable enterprise. Another example of the resourcefulness of the Chamber of Culture and its satellites is a recent decree of the president of the Theater Chamber which regulates the admission to the business of publishing stage scripts. The decree contains the following provision: "The petitioner must give the guaranty that he will conduct his enterprise according to his best artistic and moral conscience, cognizant of his national and social responsibility. He must possess the reliability, fitness, and economic background necessary for his profession. He must have worked in this field at least three years, and must prove his experience in all its branches." Similar guaranties are demanded from all theatrical and motion-picture producers under the new Theater and Cinema Acts passed in the spring of 1934.

#### *"Coordinating" the Press*

The Reichstag fire provided the government with the opportunity to dispose of the whole Marxist press, namely, about 50 Communist and no less than 130 Social Democratic party-owned papers, as compared to about 120 then existing National Socialist news organs. The disappearance of the opposition press, however, merely prepared the ground for what Dr. Goebbels has called the "polyform expression of a monoform national will." Early in October, 1933, the Editor Act initiated a new epoch in German newspaper work by elevating the press to a "public" institution. Henceforth no one could be employed in an editorial capacity who was rated unacceptable by the Propaganda Ministry. In the "execution of the editorial function" all editors are under the obligation "to withhold from publication everything which: (1) confuses selfish with common interest in a manner misleading to the public; (2) can weaken the strength of the German people nationally or internationally, the German nation's will toward unity, German defensive capacity, German culture or German business, or may hurt the religious feelings of others; (3) is offensive to the honor and dignity of a German; (4) illegally injures the honor or the well-being of another person, hurts his reputation, or makes him ridiculous or contemptible; (5) is for other reasons indecent."



While the Editor Act immediately succeeded in sterilizing the printed word on every news sheet, "coordination" alienated hundreds of thousands of former newspaper subscribers. When the year of the National Revolution ended, about six hundred dailies had closed their editorial offices forever. In nine months the Berlin *Morgenpost*, for instance, experienced a drop in its daily circulation amounting to 200,000 copies. Hitler himself felt impelled to complain, "It is no pleasure to read fifteen papers which have an almost identical text." Early in May, 1934, the Propaganda Minister tried to adjust the situation by proclaiming a new "policy with respect to the editorial function of the German press," namely, "to allow the newspapers wide scope. Preference must be given to free comments according to their own viewpoints."<sup>12</sup> But "free comments" did not, of course, mean free comments. In August, 1935, for instance, the *Pommersche Tagespost* was suppressed for three months on the ground that it had repeatedly failed to comply with the Propaganda Ministry's main demand "that there can be only one task for the press, namely, to arrange its whole contents in accordance with the spirit of National Socialism, and to make each paper a protagonist of the National Socialist ideology." Mourned the *Frankfurter Zeitung*, "Indeed, what one misses most in Germany is a serious objective discussion."<sup>13</sup>

In the meantime, press propaganda appears to have reached its natural saturation point. In 1934 even National Socialist papers began to experience what coordination means in terms of their own circulation figures. The militant *Angriff*, never itself after the heyday of hard-driving opposition was over, declined from 94,000 printed copies per day in December, 1933, to less than 54,000 copies at the end of 1934. The *Völkischer Beobachter*, the backbone of the National Socialist press, struggled hard to hold its ground; it was unable to break the circulation record of the Jewish-founded *Morgenpost*, which has remained the dean of dailies. These conditions may have accounted for the drastic decrees issued by the president of the Press Chamber in April, 1935, which, if literally enforced, will extinguish the life of all but Party organs. According to the decrees, "coordinated" papers can be eliminated whenever official agencies are satisfied that such a measure is required to remove "unsound competition." Moreover, the publishers of "coordinated" press organs must



prove their own and their wives' "Aryan" descent back to 1800; they are no longer entitled to pursue their business in the form of anonymous corporations and, at the same time, may not financially depend on profits from their publishing ventures. Dr. Dietrich, Press Chief of the National Socialist Party, claimed that the sweeping move of the Press Chamber had not originated with the government, but with the rank and file of the newspaper readers whose preference was for "the paper of firm, unperturbable political character." As a matter of fact, however, the official total circulation figure of the "coordinated" press far outweighs the corresponding figure for National Socialist dailies.

*"Voice of the Nation" or "Voice of the Master"?*

Compared to press or radio, the screen is small fry, although its ticket turnover amounted in 1929 to 350 millions. That the enlistment of the cinema for official propaganda purposes has not precipitated a consumers' strike is shown by the recent increase in total attendance, which has partly offset the impact of the depression and the ensuing record low of 250 millions reached in 1932. This development is the more reassuring since the Motion Picture Chamber has imposed minimum prices on all theaters. But while the chamber assists producers with appropriate suggestions, it does not itself supply the public with appropriate pictures. The Broadcasting Chamber and the Reich-controlled National Broadcasting Company enjoy the advantage of directly paying the fiddler.

The technical mobilization of the radio as the "voice of the nation" is a history of remarkable accomplishment. The number of transmitters grew to more than twenty-five in a country smaller than Texas; the power of the main transmitters was increased to 100 kilowatts, the international limit; emphasis was laid on the production of "people's receivers," taken up by about thirty plants as a specialty combining low price and reliable quality; in 1934 the figure for radio sets passed the six million mark, indicating an increase of more than a million in one single year. Still more important was the organization of mass listening. An army of National Socialist radio functionaries took charge of this problem. Whenever the Leader had reason to appeal to the people at large, these functionaries installed loudspeakers in public squares and conveniently located meeting halls,





in court rooms, administrative departments, schools, and factory yards. Sirens howled, and the hustle of professional life stopped throughout the nation for the time of "community reception." It is estimated that the Leader's words thus reached an audience of not less than 56 millions. Indeed, National Socialism and the German radio, "its towering herald,"<sup>14</sup> have become "one insoluble unit."<sup>15</sup> "With the radio we have destroyed the spirit of rebellion," the National Broadcasting Chief has asserted. And the president of the Broadcasting Chamber proudly adds "that the Leader of Germany does not have to rule with dictatorial means. He enjoys the confidence of his people. This is abundant proof of the political and propagandistic success of the National Socialist radio activity."<sup>16</sup>

One can hardly wish for a more candid assessment of the function of propaganda in the one-party state than that expressed in this official comment. Only in so far as propaganda succeeds in "setting the minds right" is the Leader relieved from the necessity of "ruling with dictatorial means." Propaganda has acquired the role of the principal process of government. The faith is administered to the people instead of being allowed to spread through its own strength. As the object of propaganda, the people's exclusive contribution is to absorb the approved creed rather than to regenerate it in its own conscience. Minister Goebbels clearly stressed this point when he said in the spring of 1934, "Since we National Socialists are convinced that we are right, we cannot tolerate anybody who contends that he is right. For if he, too, is right, he must be a National Socialist, or if he is not a National Socialist, then he is simply not right." On another occasion he stated, "The right to criticize belongs to the National Socialist Party. I deny anybody else such a right. The right to criticize is exercised by the National Socialist Party to a sufficient extent." But while there is doubtless ample and articulate criticism within the Party, its sole legitimate basis is the National Socialist Party program, which was designed to meet the need, not of government responsibility, but of unconditional opposition.

To be sure, Dr. Goebbels himself suggested that in the "ennobled democracy" which prevails today in Germany "the people give few men the right to command, but on the other hand reserve the right to criticize these few men on general lines.



This right is exercised in the elections." Yet, as elections and plebiscites are reduced in the one-party state to demonstrations of "compatibility," the very appeal of the Leader to the people carries with it all the implications of the "leadership principle." In ordering a plebiscite on the Succession Act, Hitler stated in no uncertain terms: "It is my will that the constitutionally valid cabinet resolution by which the powers of the former Reich president have been vested in me and hence in the office of the Reich chancellor, receive the explicit sanction of the German people." "It is my will"—if "genuine leadership" springs from an "act of grace," it would indeed be sacrilegious to withhold from the Leader what Providence moves him to ask for. Consequently dissent is logically outlawed and with it free decision. "The real will of the people," which the Leader executes as the sole authority on the "right direction," claims precedence over the will of the people. Governmental campaign posters, in solitary legitimacy, omitted only the illegitimate alternative in supplementing the text of the plebiscite question with the large-type line: "The whole people answers this question with a unanimous *Yes!*" Minister Göring succinctly summarized the political philosophy of the German Führerstaat when closing the historic Reichstag session following the "Röhm revolt" with these words: "And if abroad it is believed today that chaos threatens Germany, the German people respond with the single cry: We all approve always of what our Leader does." With this qualification of the people's "right to criticize," the "state of national community" holds the electorate to the proper discharge of its proper function, namely, to serve as the national echo—an eminently worthy function, for the echo resounds the voice of the Leader.

## 2. PREPARING FOR PREPAREDNESS

In combating unemployment the government may either resort to an adequate public works program or to the policy of placing large orders with the most important industries. In either case the government creates opportunities for reemployment. Whether such a public works program gives preference to projects of a humanitarian, economic, or strategic nature, whether direct governmental orders are of a civil or military character, are questions that have no immediate bearing on the



general objective, namely, to "make work." "Freedom" thus provided the Third Reich with an untapped reservoir of "made work" projects. Its full exploitation was limited only by the Hitler cabinet's capacity to borrow money. For the past two years this capacity appeared to be boundless. Why that was so, and what obstacles to continued borrowing the government may have to face in the future, will be discussed in the closing chapter. Suffice it to say here that for the time being the cabinet has succeeded in killing two birds with one stone. The number of unemployed has decreased from its all-time peak of more than six millions in the spring of 1933 to a little more than one million, and at the same time Germany has ceased to be disarmed. To facilitate the necessary transfers of real property and to insure central planning a Land Bureau directly subordinated to the Leader was set up in the summer of 1935.

#### *"Freedom" and the Family*

But the mechanics of national defense are only one aspect of "freedom." It is clear that a "decline of the birth rate in the long run means inevitably also decomposition of the army."<sup>17</sup> As a matter of fact, long before "freedom," Germans were painfully aware that the national birth rate was falling off, while the average prolongation of human life due to modern public health standards threw an ever-increasing burden of old-age subsistence on numerically decreasing rising generations. It is estimated that the total population figure could not be kept at its present level even if every fertile married woman conformed to a three-children program.<sup>18</sup> Here too National Socialism has tried to achieve two purposes with one measure. The government offers marriage loans to women in all professions willing to trade their positions, which fall to unemployed men, for the bliss of wedlock; the loans can be amortized through childbearing. More than 200,000 marriage loans have been extended. Recent statistics indicate a gain in the birth rate over previous years. But the gain seems to correspond closely to the expected first redemption installment on the marriage loans. Otherwise economic considerations have obviously thwarted National Socialism's campaign for bigger and better families.<sup>19</sup> In 1935 petitions for marriage loans did not measure up to the former average.



While the Third Reich stresses the importance of marriage as an essential institution, and consequently does not encourage women to engage in professional work, it has never embarked upon a policy of wholesale dismissal of women employees. The National Socialist Women's Association, one of the Integral Formations of the Party, includes a vast army of wage earners who are not at all without a voice in matters of general policy. It is significant that recently two women were appointed district court judges, and that at the Party Congress in 1935 Dr. Ley, addressing the Labor Front, emphasized the necessity of proper labor conditions for women engaged in factory work.

The birth rate supplies merely a quantitative standard for measuring fitness for "freedom." The qualitative requisites are thus far defined only in the negative, namely, in the Sterilization Act. Social workers in Germany have for a long time been discussing the question of how to curb the spread of hereditary mental diseases and to minimize the disproportionately heavy financial load of hospitalization. National Socialist race consciousness and the fact that imbeciles do not properly respond to military drill gave the general public health argument new significance. In resorting to surgical technique for the purpose of depriving "human waste" of progeny, the Third Reich followed the footsteps of a number of countries which have been pioneering in this field for some time. The Sterilization Act enumerates the mental and physical defects of a hereditary character from which a freeman must be free. All members of the medical profession are to search their files for potential cases, which they must report to the proper authorities. Lack of consent on the part of the patient can be overruled by a decision of one of the Eugenics Courts set up under the act.

That the process of justice is not unduly cumbersome was recently illustrated in a case which came up for review by the Superior Eugenics Court in Berlin. Here the lower court had affirmed the necessity of sterilization, and the operation was accordingly carried out. In doing so, the medical authorities had obviously overlooked the fact that the patient had appealed the case to the Superior Eugenics Court. To complicate the matter further the patient was found to be a Swiss citizen. But the Superior Eugenics Court lived up to the emergency. It confirmed the decision of the lower court and laid down the rule



that the application of the act is not confined to German citizens.<sup>20</sup> In another respect, however, the construction of the law is distinctly restrictive. In various decisions the courts have held that one fact invalidates any medical diagnosis of feeble-mindedness: military promotion during the war, be it only to the rank of subcorporal.

*Labor Service—The Army's Prep School*

In the summer of 1931 Chancellor Brüning tried to counteract the spreading demoralization among the unemployed youth by organizing a Voluntary Labor Service. For obvious reasons, the National Socialist Party did not support this scheme. But early in 1932, when the Movement captured the "dwarf state" of Anhalt, Colonel Hierl, a "trusted fighter" and one of the Party's outstanding military experts, was called in to execute Hitler's plans for a "Labor Service according to National Socialist principles." After the National Revolution this type of Labor Service superseded all former establishments throughout the Reich, and Colonel Hierl was made its national superintendent. The new organization was severed from the Ministry of Labor and subordinated to the Ministry of the Interior. The voluntary features soon began to fade. Numerous professional organizations, from those of doctors to those of chimney sweeps, made membership or even admission to their respective fields dependent upon the candidate's successful passage through the Labor Service. The same applied to university matriculation. The state of Saxony was the first to insist on a Labor Service term for its entire public personnel. The Party demanded this test from all its office holders. Finally, in the summer of 1935 the Labor Service Act made it obligatory for every citizen, whether man or woman, up to the age of twenty-five years to perform camp work as an "education in the spirit of National Socialism and to a true understanding of labor, particularly to the right appreciation of manual work." The camp term is fixed at six months.

In accordance with the terminology of the conscript legislation, the act defines the Labor Service as "honorable service for the German people." Consequently, the Jewish population is excluded. The Labor Service maintains its own recruitment bureaus in order to draft each year about 350,000 young men and possibly the same number of young women; but the latter may



not count on their enlistment orders before 1938, as the regulations for the women service are not expected to be ready before the fall of 1937. At present the grand total of enlisted women amounts to no more than ten thousand. This figure in itself tells where the emphasis in the Labor Service lies. The permanent training personnel will be recruited from the ranks. Aspirants must first serve a probationary term of two years in the Labor Service. They become eligible for a regular position only after having demonstrated their fitness in the army and during a subsequent period of study in a Troop-Commander School.

Today the "sole task" of the Labor Service is "educational."<sup>21</sup> This education is offered through "work at the German soil," the personal experience of close comradeship of men of all classes, "permeated by one national will," political instruction, and "exercises." The political instruction confines itself to "the events of the great German history, particularly the World War, the struggle of the National Socialist Party, and the structure of the National Socialist Reich. The exercises promote subordination and discipline, and make the incorporation of the individual personality into the will of the whole people a self-evident fact."<sup>22</sup> As to the "work at the German soil," the program of the Labor Service includes the cultivation of land, particularly of moors; reclamation work; the building of dikes for the protection of tilled land against high tide, and of power dams; the digging of fish ponds; reforestation; the adaptation of land for farm settlements and part-time farming of urban labor; road work, also in connection with the execution of the new automobile highway network; the building of aerodromes and of open-air meeting places; establishments for protection against disasters; and cooperation in bringing in the harvest.

That "political instruction" is by no means the chief goal of the Labor Service is evidenced by the fact that Party members do not enjoy exemption. In fact, in line with the regulations applicable to the army, "members of the Labor Service who belong to the National Socialist Party may not carry on any activity for the Party or its Integral Formations." As the "trusted fighters" during their Labor Service term wear the same uniform as do all others, including sons of one-time Communist voters, so they too must "incorporate their individual personality into the will of the whole people." "Freedom"



implies equality of status, as does death. As if to underline this truth, the swastika armlet of the Movement is part of the official uniform of the Labor Service. But in reenforcing the symbolism of compliance the Labor Service does not lose sight of the four principal virtues of a soldier: "honor, loyalty, discipline, and comradeship, which must pervade all aspects of the service."<sup>23</sup> In this way the Labor Service may justly be called "the great educational institution for the entire nation."<sup>24</sup>

*"The Phalanx of Steel"*

"The people is a defense community. Military organization is a requisite for the political existence of a nation."<sup>25</sup> This, it appears, was commonly understood in Germany, for few measures of the Leader were as widely acclaimed throughout the country as was the conscription law of March, 1935, which revived the prewar system of national defense in defiance of the Treaty of Versailles. Two months later the cabinet promulgated a new Defense Act. "One can say without exaggeration," a competent authority states, "that a copy of the act is already in the hands of almost every citizen, and that its main provisions have become common property of the whole people."<sup>26</sup>

Under the Defense Act every German is called upon to serve his country under the colors as a "duty of honor." In times of war men and women alike have to perform such services as will be assigned to them by the Leader as the highest commander-in-chief. No German living abroad is exempt from military duty, whether or not he possesses also another nationality. As a rule, "Aryan" descent is required for active army service, which lasts one year. But "non-Aryans" are not free from military duty; they fulfill this duty exclusively with the reserves. In addition, the act states explicitly that active army service must be preceded by the regular term of labor service. Each year those Germans who reach the age of twenty are drafted for active army service. After their discharge, twelve months later, they belong to the reserves until the age of forty-five. The reserves may be reenlisted for limited periods of further training. But those beyond forty-five years of age are by no means certain of permanent retirement from the barrack ground. They constitute the Land Storm and can be summoned back not only at the outbreak of war but also "in particular emergencies." How long one belongs



to the Land Storm the act does not say—"a regulation which would have appeared unbearable to the individualistic thought of the past."<sup>27</sup> In prewar times, Land Storm duty ended with the age of forty-five; those who were beyond that age on the day of mobilization remained civilians throughout the World War, unless they reenlisted as volunteers.

The Conscription Act limits the German peace-time army to "12 corps and 36 divisions." But we are assured that this provision was "obviously due to considerations of foreign policy."<sup>28</sup> The act is not meant to interfere with the right of the Leader "to fix the actual strength of the army and to determine its immediate structure."<sup>29</sup> Moreover, the Defense Act has abolished the prewar *cadre* system, under which the peace-time formations represented merely a framework to be filled in case of need by the reserves. Under the present arrangement the peace-time army is no longer a skeleton, but flesh and blood; its formations are completely filled by those Germans drafted for their term of active army service. The size of the two other units of national defense, navy and air force, has not been made public.

Particular care has been devoted to the quick organization of an efficient recruitment apparatus. Here the new War Ministry could fall back on the minute pattern of prewar practice. The country, except for the demilitarized zone established by the Treaty of Versailles, is divided into nine army regions, each including two to four recruitment inspections. The recruitment inspections comprise up to sixteen recruitment districts each, subdivided into from one to five precincts. Every precinct has its own recruitment bureau headed by an officer especially assigned to this duty. The precincts correspond closely to the units of local government.

The chief reason for gearing the recruitment machinery to the administrative system lies in the fact that, under the German registration law inherited from the Second Reich, local police bureaus throughout the country maintain elaborate files on all essential data concerning every citizen, from his age, address, and profession to the age, address, and profession of his parents, wife, and children. From these files and the birth registers the recruitment rolls are compiled. More than a dozen new blank forms have been designed for this purpose, and police bureaus have had



a hectic time getting all the *i*'s dotted and all the *l*'s crossed. The type of information to be recorded in the recruitment rolls is suggested by the ordinance governing the draft for 1935. Recruits must supply the drafting agencies with the following documents: (1) birth certificate; (2) race certificate; (3) graduation certificate and records of professional training; (4) membership card for the Hitler Youth, the Storm Detachment, the Special Guard, the National Socialist Automobile Corps, the German Aviation Union, or the German Amateur Radio Service; (5) evidence of participation in military athletics courses; (6) the Voluntary Agricultural Labor certificate; (7) the Labor Service passport; (8) records of nautical training or nautical experience; (9) the national athletics certificate or the Storm Detachment's athletics certificate; (10) motor driver's license, air pilot's license, or the certificate of the German Sailing Association; (11) optical prescription if they wear glasses. There is a dotted line for each of these items in the set of blank forms supplementing the recruitment rolls which, as the law states, "must be guarded against unauthorized inspection, kept under lock, and carried into safety in case of imminent danger."

In the meantime the new army enlivens the programs of national ceremonies through parades and special performances given by its different formations, from tanks and heavy artillery to squads of bombing planes in action. The display of the armature of "freedom" contributed much to making the Party Congress in 1935 a full success in spite of spreading economic sorrows. It aroused the enthusiasm of hundreds of thousands of farmers who, assembled on the Bückeberg near Hameln for the National Harvest Day celebration, were treated to everything except battleships and submarine flotillas. Indeed, "the all-embracing defense community is embedded in the Reich's national organization, and with it the army. In perfect harmony both form one single whole."<sup>30</sup>

### *Leader and Army*

Whereas the Labor Service is the "great educational institution for the entire nation," the army specializes in professional training for "freedom." The Defense Act does not mince words in proclaiming: "Soldiers are not permitted to engage in political activities. Their membership in the National Socialist Party



or its Integral Formations or its Affiliated Organizations is suspended for the period of active military service." Already in March, 1933, General von Blomberg, addressing the garrison of Dresden, expressed the army's philosophy in these words: "First, whether the soldier is by birth a Prussian, a Saxon, or a Bavarian, when he entered the defensive forces, he pledged his allegiance to the whole German people. We are the visible manifestation of the unified German Reich. Second, when you became soldiers, you renounced domestic strife and discord; for we do not belong to any party or any class. Third, we are conscious of the high responsibility of being the sole organization in Germany which carries arms, and we fully master our craft. This will remain the case in the future. But we do not stand alone. No, beside and behind us stand millions of Germans. They carry no arms in their hands; but their hearts and minds are firm, and they are resolved to live and to fight with us for Germany."

It is a remarkable comment on the homogeneity of German army tradition that the new Defense Act in its provisions on "duties and rights of the members of the defensive forces" has borrowed heavily from the Defense Act of the republic passed in 1921. For these provisions were "so valuable" that the National Socialist government "found little need for change."<sup>31</sup> As the republican authorities fourteen years ago bowed to the wisdom of the Defense Ministry's proposals, so the Leader has yielded to the advice of his military staffs on all vital questions. When the late Staff Chief Röhm urged Hitler in 1934 to transform the Storm Detachment into a regular army formation, the veto of General von Blomberg, who had his own opinion on the Brown Shirt "tin soldiers," was decisive. No one has ever succeeded in imposing "political training" on the officers corps. The connection between the Party on the one side and army and navy on the other exists exclusively in the person of the Leader; only in the new air force under the command of General Göring is the contact broader. But General Göring, himself a professional soldier, is, as chief of the air force, subordinated to War Minister von Blomberg.

The reestablishment of a "people's army" of necessity affects the dynamics of domestic politics. The Storm Detachment has to face a strong competitor for national prestige, to whom it will



be forced to leave the field. Staff Chief Lutze tried to console his Brown Shirts in the early summer of 1935: "It is often said that after the reintroduction of the conscript system the guardians of the creed have become superfluous. My comrades, never has a cannon built a state or sustained a state; states are built and sustained through ideas and ideologies alone. It is now more necessary than ever before that we continue to serve as the army of the faith in village and city, and spread the faith among our fellow-citizens." But while the army certainly does not contest for the honor of "spreading the faith," it is still evident that under the conscript system the Leader is no longer without an effective mechanism for disciplining even the largest of the Integral Formations of the Party, should "freedom" and the Movement part company one day. A Police Minister in the absolutist period once warned, "To arm a nation means to organize resistance and rebellion." And the German historian Treitschke observed in his day that "in a country where general conscription exists, it is impossible in the long run to rule against the will of the nation." "Tripartism" and propaganda may reduce the people to the role of the national echo; but in the defensive forces it resumes its natural priority over the Party.

"Popular government becomes existent only through the combination of national leadership and military leadership."<sup>32</sup> In the one-party state the problem of checking military authority by reserving the primacy of political decisions for the civil government dissolves into thin air. The German soldier swears his oath of fidelity to the Leader. The oath reads, "I swear by God this holy oath, that I shall be unconditionally obedient to the Leader of the German Reich and people, Adolf Hitler, as the highest commander-in-chief, and be ready as a brave soldier at any time to seal this oath with my life." No reference is made to the approved faith. The Leader stands above it. As to the faith, compliance suffices. As to "freedom," "unconditional obedience to the Leader" is indispensable. For "in the life of a nation there is no other organism outside the army which in its whole activity prepares itself only for the hour when it must demand readiness for the sacrifice of death from all its members. The oath of the soldier stands entirely under this grave earnestness; its aim is to make him strong for the sacrifice. It conceives of the totality of soldierly duties under the aspect of loyalty to the



Leader, as Prince Frederick Charles once expressed it in the question: Lord, where do you command us to die?"<sup>33</sup>

## NOTES

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20. *Juristische Wochenschrift*, vol. 64, p. 2505, 1935.
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24. *Ibid.*, p. 435.
25. Poetzsch-Heffter, *op. cit.*, p. 305.
26. Heinrich Rosenberger, *Deutsches Recht*, vol. 5, p. 294, 1935.
27. *Ibid.*, p. 296.
28. *Ibid.*, p. 294.
29. *Ibid.*
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31. Rosenberger, *op. cit.*, p. 295.
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33. Hermann Böhme, *Deutsches Recht*, vol. 5, p. 314, 1935.



## *Chapter IV*

### THE ENLISTMENT OF TRADITIONAL INSTITUTIONS

The complexity and the wide range of modern industrial organization, which account for the constant growth of public administration, make the task of successful revolutionaries infinitely more difficult than it was in 1789. In the era of the service state the people is not deprived of the possibility of overthrowing the government. But it has become highly impracticable to dispose of the essential instruments of government. The Third Reich is not an exception to this rule. Emergency government tends to fall back on those political institutions and techniques of adjustment which stand out in the mind of the nation as time-honored and dependable. The substitution of the leadership principle for civil rights was accomplished almost without effort. But no one thought of annihilating the executive branch, though it was once the prime target of National Socialist cursing. "The Leader has spoken the great word of transforming revolution into evolution in view of the fact that the German citizen in general had confidence in the civil service, and could have such confidence; that, moreover, considerations of foreign policy required precedence over the organizational difficulties of administrative reconstruction; and that finally it would have been impossible to replace the professionally trained public service with its record of expertness by untrained fighters of the National Socialist Movement, lest the whole apparatus of government would have collapsed."<sup>1</sup>

#### 1. CIVIL SERVICE "RESTORATION"

Prior to March, 1933, the possible rise of National Socialism to uncontested control left the German administrator almost unperturbed. He had viewed the swing of the pendulum of political power more than once. Cabinet ministers had come and gone. Moreover, National Socialist propaganda had always emphatically pointed to the virtues of Germany's prewar



bureaucracy. Yet the civil service was not without an Achilles' heel. The Weimar constitution had expressly bestowed upon it the fateful privilege of taking an active part in party affairs. As long as the governmental coalitions changed only within the general frame of democratic ideology, the party line-up of the public personnel meant hardly more than just a handicap. A complete shift of ideology, however, could easily turn the handicap into a grave menace. National Socialism stood outside the Weimar pattern. Though technically conforming to the standards of lawful electoral and parliamentary procedure, the Party more than once had boasted of its "revolutionary" temper. "We were," chuckled Dr. Goebbels afterward, "not legal in order to be legal, but in order to rise to power. We rose to power legally in order to gain the possibility of acting illegally."<sup>2</sup>

But the fact that the Hitlerite opposition forces, though publicly disavowing any intention to overthrow the government by violence, were committed to a course of political reconstruction from the bottom up could not reasonably be doubted in spite of the wolf's parading in the sheep's clothing of "legality." As a "revolutionary movement" the National Socialist Party was outside the reach of party affiliation for all those civil servants who sensed the incompatibility of loyalty to the constitution and an ideology which militated against its very foundations. On the other hand, hundreds of thousands of civil servants had since 1919 openly sided with other parties, except the Communist Party, which in proletarian righteousness insisted on being officially recognized as revolutionary in method as well as in thought. The relatively wide spread of party membership among civil servants, confined as it was to "safe" parties, gave color to National Socialist agitation. Campaign pamphlets pictured the German bureaucracy in its totality as dangerously infected by the pestilence of partisanship. Thus the issue of civil service "restoration" became paramount in the National Socialist program of salvation.

### *Enforcing "Political Reliability"*

Weimar democracy had conceived of the administrative profession as a body of "servants of the whole nation, not of a party"; it thus tried to protect executive stability despite the shifts in



cabinet composition which are inherent in representative government. National Socialism advanced absolute claims based on the infallibility of a creed of religious zeal. A party conquering the state by means of electoral procedure is a phenomenon observed in many a landslide. That government assumes broad responsibility for the general welfare of a nation has been experienced in many an emergency. That a "revolutionary movement," entrenching itself for a "millennium," should fortify its political faith by transforming it into the official monopoly of righteousness, public and private, was expected neither by the public service nor even by a considerable fraction of those voters who cast their ballots for the Cabinet of National Concentration in the March elections of 1933.

With the emergence of the one-party state the very basis of civil service neutrality was shaken. In whose interest should the "servant of the whole nation" guard his neutrality when National Socialism had come to mean German unity, German valor, and German future? Did not the people and its public service mutually depend on each other? Neutrality, after all, found its last justification in the necessity of keeping the administrative profession ready and fit to serve the opposition in unreserved loyalty should it succeed the government in power. National Socialism was ideologically without opposition as well as without succession. It proclaimed an unbreakable covenant with eternity.

Political neutrality had implied restraints on the civic activation of the public service rather than whole-hearted and demonstrative political support of the government of the day. The National Revolution, eager to line up the whole people, did not content itself with the perpetuation of neutral-mindedness and the unenthusiastic preparedness of an obedient bureaucracy to accept orders. As the indispensable instrument of government the civil service was soon to experience the impact of the new ideology. This new ideology demanded unreserved identification with the aims of the Movement. The civil servant, stated an official proclamation addressed to German officialdom, "is one of the most effective mediators between the Leader and the people." Only he can successfully operate as a mediator who is penetrated by the belief which he is supposed to spread among others. From the National Socialist point of view it was



a minimum requirement for this high task to be at least "politically reliable" in the light of the fundamental implications of Germany's New Deal.

Duly authorized by the Enabling Act of March, 1933, the Hitler cabinet hastened to remodel the public service. Two "cabinet acts" of different character were designed to bring about the preliminary adaptation in anticipation of a complete overhauling of the civil service law, for which the drafts are being worked out in the Reich Ministry of the Interior. The first of the preliminary measures, the Civil Service Restoration Act, concentrated on raking through the existing personnel, while the second attempted to adjust the general civil service law to the immediate needs of "reorientation."

The Restoration Act had originally been advertised as the overdue cleansing of the public service from political favorites of the Weimar system who were charged with having crept into the administrative organization without possessing the required qualifications. It was also commonly assumed in advance that the law would make good the National Socialist pledge to end the tenure of those civil servants who were of "non-Aryan" descent. With the promulgation of the Restoration Act, however, it became all too evident that the cabinet had obtained a firm grip on the public service as a whole, national, state, and local.

First, "party-made" officials were to be wiped out of public office. They were defined as "outsiders" who had made their way into administrative positions since the revolution of 1918 without either complying with the general requirements of the career or possessing the customary training or other fitness for their office. Although the definition left ample space for the exercise of discretion, the total yield proved much more meager than the National Socialist tirades of indignation had induced many voters to expect. Detailed figures for the whole country have not been made public. But in one state jurisdiction for which figures are available, out of a total of more than 1,600 civil servants removed under the Restoration Act only 19 were actually dismissed as "party-made" officials. From the professional angle German bureaucracy had not ceased to be homogeneous during the republican era. Second, civil servants of "non-Aryan" parentage were to be retired unless they either



had been in the service since prewar days or had given proof of immediate sacrifices during the World War. This privilege extended to those who had actually fought at the front or whose fathers, sons, or husbands were killed in action. It also applied to those who had participated in military engagements as members of the corps of volunteers organized at the request of the government early in 1919, or against the "foes of the National Resurgence." With the September legislation of 1935 initiating full segregation of the Jewish population, all special immunities under the Restoration Act have, of course, become obsolete.

While the provisions concerning "party-made" officials and civil servants of Jewish descent affected only numerically inconsiderable groups in the public service, the Restoration Act, in addition, took care in its own way of German bureaucracy at large. Treading the same path as did Fascist legislation in Italy, the law bestowed upon all appointive agencies the power to dismiss any civil servant who failed to satisfy his superiors that he would "always" fully identify himself with the aims of the National Revolution. Finally, it was provided that even without specific charges of "political unreliability" civil servants could be placed on a pension should the interest of the service or the simplification of public administration necessitate it. This section was often employed in case the more detailed clauses proved wanting in desired results. It lent itself particularly to a smooth elimination of those civil servants of Jewish parentage who were exempt from retirement under the "non-Aryan" section.

In order to facilitate the transfer of civil servants, especially from ministerial departments to the field service, the Restoration Act rounded out its comprehensive program by supplying a legal basis for the unrestricted transfer of officials into other positions of similar career, regardless of whether or not the new position carried a smaller salary or was of lower rank. In the interest of accelerated action, administrative departments were relieved of lengthy investigations. Each civil servant, on request of his superior, had to fill out a detailed questionnaire on his professional training, his war service, his antecedents (including his grandparents), and his party affiliations. No one was entitled to a formal hearing; but the departments were officially instructed to accept any comments the civil servant



should care to bring forward "within three days." Openly deviating from the general civil service law, the Restoration Act expressly prohibited any appeal of removal orders to judicial tribunals. Full pensions according to actual service age were to be granted only to retired "non-Aryans" or those removed in the interest of the service or the simplification of public administration.

### *Bureaucracy in Transition*

While the Restoration Act aimed mainly at a rapid and effective shake-up of the higher civil service, the second preliminary measure, passed in June, 1933, turned its face toward the future. Its most weighty provision wrote an undebatable *finis* to the chapter of civil service neutrality. It read: "As a national civil servant, only he may be appointed who possesses either the training required for his career or the customary training or other special fitness for the office conferred upon him, and gives the guaranty that he will at all times fully identify himself with the State of the National Resurgence." According to the express intention of the act, the same applies to any other public official, state or local, throughout the Reich.

Never before in the history of German bureaucracy had a change of such import taken place in so short a time. It touched the foundation of established civil service ethics. It raised the most serious conflict in the hearts of hundreds of thousands of "servants of the nation" for whom National Socialism had thus far been nothing else than the creed of just another party. The new faith soared down on them like a hawk. Before they had time to contemplate its full significance they were reminded that, from now on, they were "Hitler's soldiers in plain clothes."<sup>3</sup> But it was clear that this epithet merely referred to what was expected from them. In the summer of 1933 a National Socialist minister stated publicly that when he took office he found but eighteen Party members in his department, among a total public personnel of several thousands. The symbolism of compliance, beginning with the Hitler salute, barely veiled the fact that the bureaucracy had no part in the erection of the Third Reich. Men "with a hard will and still harder fists"<sup>4</sup> accomplished whatever the National Revolution had reason to claim as its achievements. In "restoring" the civil service the new authori-



ties soon began to fill vacant positions with "trustworthy and tried fighters of the national front."<sup>5</sup> Moreover, through the institution of "political offices," which the republic expanded so unwisely in 1922, the government could comfortably "adapt the highest and directorial administrative positions to the necessities of politics."<sup>6</sup>

In the meantime the whole service pattern underwent profound changes. The institutional guaranties of tenure have remained suspended. No civil servant, whether national, state, or local, can be sure that he will not be pensioned off next month over his protestations. He is subject to disciplinary discharge for such offenses as chatting with a Jewish neighbor or buying his cigars in a "non-Aryan" store. He is instructed to discard definitely the "habit of thinking in terms of classification and salary scales" whether or not he was addicted to such a habit. He has seen the idea of staff representation fade. "The professional interests of the civil servant," reads a decree of the National Minister of the Interior, "will be pursued by the state itself." Another executive order contains this revealing comment: "It is irreconcilable with the leadership principle enforced in the National Socialist state that the civil servant is given the opportunity to inspect the reports of his superiors on his conduct, and thus to control and criticize their opinions." But as the leadership principle prevails inside the office, so does it likewise outside the office. Civil service trade-unionism was welded into one single unit, the National Association of German Civil Servants, which as one of the Affiliated Organizations of the Party enjoys semi-public status, but not much else.

### *Carrying On*

During the republican period the public service was drawn more closely to the arena of party politics than ever before. It thus got into the firing line of domestic discord. But while it lived largely off the substance of its traditional heritage, it was still strong enough to supply "presidential government" with a safe foundation, when "parliamentarism" had to concede defeat. The very fact, however, that the executive branch stood necessarily for the maintenance of the constitutional regime made the civil service suspect to the forces of the National Revolution. In the Third Reich the role of the custodian of the public weal has



been taken over by the Movement. "In the great community of National Socialism," Hitler has said, "supported by the whole people as it is, the Party must be a select order of leadership destined to guarantee the National Socialist state for all future time." But as the enforcing mechanism of the will of the Leader, the bureaucratic apparatus labors under various handicaps.

First of all, the uncertainty of professional status and the influx of "tried fighters" have created an atmosphere of distrust and fear which does anything but enhance the civil servant's eagerness to assume responsibility and to display initiative. With that, half of the virtues of the German public service have become inoperative. Second, the acclimatization of the "outsiders," if they can be assimilated at all, absorbs energies which otherwise could be exerted in a more constructive way. Not that the number of newcomers itself presents insurmountable difficulties. With a total public personnel of about 2.7 millions,<sup>7</sup> the digestive facilities of the executive branch should not be underrated. Moreover, the process of selection in the swift-working rhythm of a well-consolidated bureaucracy tends to segregate the failures on dead ends where they can do no harm. But the real problem arises from the fact that the "trusted fighter" does not intend to be assimilated. He is filled with the thought of his mission, be it solely the mission of the department's political detective. How can he fail to succeed at least along this line, if he is sufficiently unscrupulous and takes enough time? And third, the dualism of Party and state, of Party hierarchy and the executive branch, particularly in the absence of any clear-cut division of competences, causes tensions which result in frustration. Acute conflicts are by no means infrequent.<sup>8</sup>

While the public service has meanwhile fully adapted itself to the symbolism of identification, it is anything but won over to the National Socialist cause—in fact, no one has ever attempted to "win" it. Its general professional outlook has not changed, except that its morale is being weakened through inside intrigue and espionage. It carries on, as it did after the revolution of 1918, under the provisional government of Socialist composition. Not unlike the army, however, it is practically inaccessible to "political training." Even National Socialists have come to realize that the remolding of the administrator's mind may be a "question of generations."<sup>9</sup> It was recently announced that in



the future the preparation for the administrative career will begin in the Hitler Youth. That means resort to patience.

Yet it is no less true that the objectifying influence of German bureaucratic tradition works as a powerful counterpoise to the ideological subjectivism displayed by the Movement. In all matters other than Party issues, particularly in the Third Reich's economic legislation, the competent hand of the ministerial civil service is clearly discernible. While a master in his own right in the manipulation of masses, the Leader is too much a son of the German middle class not to be thoroughly expert-minded. If the public service really needed any special schooling in the crafts of emergency government, it certainly had a chance to pass all requisites ever since Chancellor Brüning was forced to initiate cabinet rule by presidential decree.<sup>10</sup>

## 2. LOCAL GOVERNMENT'S "REVIVAL"

Industrialization tends to shift the center of political gravity toward the urban settlement. The municipality becomes a matter of national concern. At the same time, the state grows conscious of its responsibility for the maintenance of economic peace and the prerequisite equilibrium between production and consumption. Social politics, again, centers on the cities. But industrial regionalism does not necessarily develop along the lines of inherited political subdivisions. Under the federal form of government the difficulties arising from this situation are accentuated by the fact that local government lacks constitutional representation at the national capital. The Second Reich had already experienced the ensuing dilemma. In the face of continuously growing need for closer collaboration between the central authority and local government, a remedy was sought through the setting up of national organizations of municipal and rural bodies which operated as local government's spokesmen in Berlin.

The first liaison agencies were founded before the World War. The years of pressing emergency from 1914 to 1919 emphasized the indispensability of direct and continuous contact between the national government and the municipal and rural authorities, particularly in the field of relieving destitution and administering the shrinking supplies for army and civil population.<sup>11</sup> During this time of utmost strain the Assembly of German Cities rose to



prominence.<sup>12</sup> But in its relations with the central departments of the Reich it was only *primus inter pares*. The official code of ministerial procedure adopted by the republic provided that drafts of statutes or important ordinances, as a rule, were to be discussed with all "national representations" of local government: the Assembly of German Cities, the Union of Towns, the Federation of Counties, and the Association of Rural Communities.

### *Squaring the Circle*

As pacemakers of progress, the four national representations of local government wielded considerable influence in the process of legislation, in the Reich as well as in the states. While speaking for their respective constituents, they found themselves in fundamental agreement on many vital issues. But as "coordination" affected cities and counties alike, so the four national organizations of local government had soon to yield to the call for "homogeneity": they were amalgamated and geared to Party headquarters. The shotgun wedding was sanctified through a subsequent "cabinet act" passed in December, 1933. Through this law the new organization, the Assembly of German Local Authorities, acquired the status of a "corporate body" under the administrative supervision of the National Ministry of the Interior.

The restrictive character of the act is clearly indicated in a number of far-reaching provisions. The tasks of the Assembly are precisely delimited. While it must "aid local authorities in their work through advice and the promotion of an exchange of experiences," it is explicitly prohibited from intruding on the Reich or the states. For it may express its views on matters of local government only if "national or state departments require an opinion on questions submitted to the Assembly." This subjugation will be the more effective since the Assembly monopolizes its sphere: all hitherto existing national representations were formally dissolved by the act, and it was also provided that no other organization of the same nature could lawfully be founded in the future. As organs the Assembly possesses a president, a deputy president, a board of directors, and a considerable number of standing committees, each devoted to some specific aspect of municipal or rural government and administration. No officer or committee member is elected. The president



and his deputy are appointed, subject to informal recall, by the Reich Minister of the Interior from the ranks of municipal or rural mayors or councilmen for a term of six years. The minister also picks the members of the board of directors and the standing committees on recommendation of the president, which is, however, not binding.

Among the organs of the Assembly, the president is the real governor. He rules in accordance with the leadership principle. While the board of directors serves only in an advisory capacity, the president "acts under his exclusive responsibility." He is the sole legitimate representative of the Assembly and chooses its staff. It is noteworthy that ministerial supervision is not confined to the satisfactory discharge of the Assembly's chief functions. The minister must also see to it that "its activity is kept within the field of tasks conferred upon it." Of still greater importance is the provision that the board of directors and the standing committees are not allowed to hold sessions on their own initiative; they may meet only when summoned by the minister, who arranges the agenda and has the right to preside in person or by proxy. Similar provisions apply to the state or provincial sub-organizations of the Assembly.

Being deliberately a scheme of restraint, the act of December, 1933, has in this respect lived up to the expectations of its sponsors. But it has failed as an attempt at squaring the circle. By forcing metropolitan units and rural hamlets to seek a common denominator on any controversial issue of governmental or administrative adjustment on which the Assembly's opinion may be requested, the act has demanded the impossible. Formerly, each of the four national representations could supply the central departments with a detailed statement which clearly set forth the proposals of its respective constituents. These statements were weighed against each other by the proper governmental authorities in the light of cabinet policies. Today the Assembly of German Local Authorities is supposed to satisfy four different factions before it is permitted to open its mouth.

### *The Local Government Act*

During the last years preceding the National Revolution the German municipalities found themselves caught in the desperate swirl of economic depression and at the same time challenged by



the display of national initiative called forth by the very scope of the catastrophe. This precarious situation alone seemed to place local government at the mercy of the totalitarian one-party state. There was no lack of pessimistic forecasts, as the Hitler cabinet took its time to reconsider the future role of municipal autonomy in the Third Reich. The deliberations were brought to a close with the passage of Local Government Act of January, 1935. Even the date on which the act was promulgated underlines its fundamental importance, for two years earlier on the same day Hitler rose to the chancellorship. In 1934 the anniversary was turned into a demonstration of parliamentary efficiency when the Reichstag, assembled for its second "short session" since the passage of the Enabling Act in March, 1933, adopted in no time the Act for the Reconstruction of the Reich. While the Local Government Act merely received the sanction of the cabinet, it is introduced in the preamble as "a basic law of the National Socialist state. The reconstruction of the Reich will be completed on the ground prepared by it."

How do self-government and the leadership principle meet? The new faith manifests itself in a number of provisions. First, the act places all German counties and municipalities, except Berlin (for which the Prussian act of June, 1934, remains effective), on one single statutory foundation, thus substituting national legislation for state legislation. Second, under the act local authorities "must conform to the laws and the aims of national leadership." Third, for each unit of local government a special delegate of the Party is to be appointed whose consent is required for the adoption of the charter. Moreover, he participates in picking the mayor and the mayor's substitutes, who are in charge of the different administrative departments, and drafts the councilmen. Fourth, the responsibility for the conduct of local government is concentrated in the mayor, who is aided through advice given by the councilmen. But the council is not supposed to cast a vote.

It may be questioned to what extent some of these innovations harmonize with "the true spirit of the creator of local self-government, Baron vom Stein," which the preamble of the act musters for its purposes. Nevertheless, certain features of the act point unmistakably to the preservation of Stein's legacy. First, the actual scope of local government has practically not



been restricted as compared with established standards prior to the National Revolution. Second, the "rights of municipalities," in the terminology of the act, may not be encroached upon except "by statute." Administrative supervision over local authorities is exercised not through the Party delegate but through executive departments, with the National Ministry of the Interior at the top; the act specifically enumerates the powers of the supervisory departments. "No other authorities or agencies" are entitled to interfere with the conduct of local government. Third, the Party delegate, who holds no municipal office himself, may exert influence only in the preparation of those measures in which he has express authority to participate. In nominating the mayor or his substitutes from all the qualified applicants who have responded to the public announcement of a vacancy prescribed by law, the Party delegate cannot be sure that his choice will meet the approval of the supervisory departments, to which the act reserves the final decision. The professional standards of the executive branch may thus offset "plain politics." Fourth, in municipalities of more than ten thousand inhabitants the position of either the mayor or one of his substitutes must be full-time and salaried. All full-time mayors and substitutes are to be appointed for a term of twelve years, non-salaried for six years. In addition, in cities the mayor or his "senior substitute" must be eligible either for judicial office or the higher civil service career in accordance with the general requirements. Except for specific disciplinary offenses, mayors and substitutes can be removed only during the first year of their term. This removal power is vested in the supervisory departments alone.

*"Trustees of the National Community"*

That the Local Government Act is not merely a political measure is best illustrated by its extensive treatment of municipal administration. In these provisions the act follows closely the reform drafts prepared by the Assembly of German Cities long before the National Revolution. "The municipalities," the law states, "as trustees of the national community, are to administer their property and their revenue conscientiously. It must be the supreme goal of their economy to preserve the soundness of their finances in the light of what the taxpayers can afford." This declaration of policy finds its essential supplement in the



provision that the area of each unit of local government must insure the maintenance of effectively integrated community sentiment and, at the same time, "the municipality's capacity to fulfill its tasks." City limits, therefore, may at any time be revised and inadequate units abolished, annexed, or combined into a new municipality.

Conscientious administration of municipal property implies that "the largest possible return shall be realized at the lowest possible cost." All charges on municipal assets must be met from current revenue. From the same source reserves are to be accumulated in order to offset depreciation and to provide funds for the enlargement of municipal enterprises, should such an enlargement be expected in the future. On the other hand, municipalities shall acquire property only in so far as it is necessary for the discharge of their proper functions, or will become necessary in due time. The consent of the supervisory departments is required if municipalities wish to dispose of property without recompense, or to sell or exchange real estate, or to turn into money archives and similar property of "especial scientific, historical, or artistic value." In all cases the return from sales must be restored to the property account, unless it is used for the reduction of existing indebtedness. Only as an exception, and within the bounds of diligent financing, may the return be appropriated for improvements or for covering deficits from previous fiscal years.

Municipal enterprises which are neither required by law nor confined to the realm of education, physical culture, public health, and public welfare, must be justified through their public purpose, accord with the municipality's financial capacity, and compliance with the expected demand. In addition, it is necessary that they meet a need which is not, or cannot be, met more effectively or more economically in another way. Local authorities, for instance, may not engage in banking, except for savings banks, which have long been recognized in Germany as a proper sphere of city-hall initiative. Economic enterprises must insure a financial return to the municipal budget. The income of each enterprise, however, should first balance all its charges, including the amounts put aside as adequate reserves. The operating charges include taxes, interest on loans, and amortization of indebtedness. If the enterprise utilizes a working stock owned



by the municipality or avails itself of services rendered by other municipal enterprises or administrative departments, the operating charges must also embrace an appropriate compensation for these special privileges.

Under the law, financial responsibility rests with the mayor, and with him alone. He prepares the budget ordinance containing the annual budget, the rates of the different municipal taxes, the limit of short-term credits to be taken up against the calculated current revenue so that prompt fulfillment of budgetary obligations is insured, and the total amount of loans required in order to balance the extraordinary budget. The extraordinary budget comprehends expenditures which cannot be met from current revenue, although they appear to be warranted through a singular need which cannot be satisfied otherwise. Not only the annual grand total of loans, but also each individual loan is subject to the approval of the supervisory departments. In this respect, the general tendency of the act, and, even more, of the administrative practice, mirrors the heavy bonded indebtedness of local authorities, incurred in previous years. Special conversion measures of the Reich undertaken since 1933 have in the meantime somewhat mitigated the pressure of municipal short-term obligations.

The municipal budget ordinance, too, must be submitted, at least one month before the beginning of the fiscal year, to the supervisory departments for the approval of the tax rates and the limit of short-term credits, as well as the total amount of loans. To this end the draft of the ordinance has to be in the hands of the councilmen at an early date. The approved ordinance, which is to be published, must be strictly adhered to by the mayor. He is permitted to make use of the budgetary appropriations only in accordance with the "principles of economy." Within the first quarter of the new fiscal year the mayor has to submit complete accounts for the previous year to the council members. Finally, the accounts, together with an analysis by the municipal auditing bureau, the record of the council discussion, and any written comments of council members, are sent to the supervisory department, which alone has the right to certify the accounts. In order to secure sound financial administration, the act confers upon the Reich Minister of the Interior the power to organize a central auditing service. This service is to conduct compre-



hensive investigations into municipal economy throughout the country and to operate as an information center on questions of municipal finance.

Most of the administrative provisions of the Local Government Act commend themselves; they also evince the growing integration of central and local authorities in a densely populated country. This trend is by no means new. It can be traced back many years; it had already assumed distinct features during the republican period. To what extent the application of the leadership principle to local government will break up the traditional pattern remains to be seen. In many municipalities the cooperation between mayor and council continues to follow precisely the same established procedure as existed before the National Revolution. In others the mayor has developed into an administrative top-sergeant. It will depend on the effectiveness of the supervisory system how far abuses of the leadership principle can be checked.<sup>13</sup>

### 3. ADMINISTRATIVE JUSTICE REAPPRAISED

"The National Socialist state is not afraid of the judges."<sup>14</sup> Indeed, why should it be? As early as the summer of 1933 the symbolism of compliance was enforced throughout the judiciary, and it worked beautifully. But as in the case of the civil service it meant "a sheer formality" for most German judges. Not the official guardians of the law but members of the bar represented, and still represent, the driving force in the Association of National Socialist German Jurists. The legal profession, particularly in the larger cities, had for a long time suffered from overcrowding. Many of its members readily responded to the racial program of the National Socialist Party, for the elimination of "non-Aryans" promised to relieve competition. Even after the disbarment of most of the younger Jewish attorneys-at-law, in analogous application of the principles of the Civil Service Restoration Act, the number of practicing Jewish lawyers in Berlin, whatever the actual scope of their business, amounted in the spring of 1935 to no less than 40 per cent of all attorneys in that city, if one may trust official figures.<sup>15</sup>

The assumption of finality of governmental action, implied in the Führerstaat concept, leaves no room for the idea of constitutionally guaranteed individual rights. Individual rights are



superseded by civic duty. There is no such sphere as unrestricted privacy. Even political indifference is a violation of the citizen's bond of allegiance. Non-voters, for instance, have been threatened with "protective custody." Community, as represented by the Leader, claims unlimited priority over human fate. Thus the Rechtsstaat doctrine found itself under fire; it was charged with liberal origin.<sup>16</sup> Administrative justice seemed on the retreat. Administrative litigation between local authorities and supervisory departments was discouraged. Prussia restricted the possibilities of legal redress of executive decisions. Her new Secret Police Act did not allow any judicial review of measures taken under it, but confined the citizen to remonstrations to be filed with the superior departments alone. The Prussian Supreme Administrative Court saw no escape from the conclusion that "political acts" such as the measures of the secret police are today clearly outside its jurisdiction.<sup>17</sup>

#### *Renaissance of a Term*

But soon the protagonists of the Führerstaat made a strange discovery. The very term Rechtsstaat, "government of laws," signified so clearly in the mind of the people the established tradition of executive legality that its official banishment would be equal to denoting the Third Reich as the government of lawlessness. The alternative was made explicit in a standard text on present-day German government published early in 1935 by two old-timers in the ministerial civil service, one of whom was Undersecretary Dr. Otto Meissner, once Ebert's and later Hindenburg's official shadow. In frantic search for an appropriate qualification of the Führerstaat concept, the authors finally assessed the Third Reich in their treatise as "the state of political power," as *politischer Machtstaat*.<sup>18</sup> But how can an "ennobled democracy" be a *politischer Machtstaat*? Voices were raised in angry protest. Soon everyone agreed that the Rechtsstaat could not simply be discarded, at least not as a term. "For it cannot be denied that this word carries with it a winning symbolism, that it is surrounded with a suggestive atmosphere, and that it everywhere calls forth open or secret sympathies."<sup>19</sup>

This consideration, of course, has nothing to do with the merits and the political significance of "government of laws." The recruitment of terminological symbols for highly pragmatic



purposes operates on the assumption that "values and concepts are subject to change,"<sup>20</sup> and that hence terminological symbols, though representative of "thought patterns of the past," may help the new faith to win its battles. But the unprecedented concentration of political power and the swiftness of decretal procedure has undermined legal certainty to such an extent that even the "law-abiding citizen" has begun to clamor for security. In order to make allowance for this universal reaction, the Führerstaat doctrine has recently shifted into reverse gear. "One can speak of a people," writes a National Socialist author, "only when a political organization is governed in accordance with principles which respect the honor and dignity of the individual."<sup>21</sup> Even "fundamental rights" have been pronounced compatible with the totalitarian state, for such rights are in reality not a contribution of liberalism, but "basic forms of popular organization."<sup>22</sup> The "recognition of the citizen's public rights lies in the interest of the state itself,"<sup>23</sup> because they lend themselves to checkmating arbitrariness in the conduct of subordinate agencies. The disputation on the Rechtsstaat, another author insists, is "definitely closed."<sup>24</sup>

### *Where to Draw the Line*

As the "necessity of maintaining administrative justice has been proved on the basis of the ideas of the new era,"<sup>25</sup> the Führerstaat doctrine has raised the question as to how "government of laws" can be adjusted to the needs of the emergency pattern. "Unanimity exists in so far as administrative justice may not attempt to review the decisions of political leadership."<sup>26</sup> Nor is it the proper function of the administrative courts to act as arbiters in controversies between local government and supervisory departments.<sup>27</sup> On the other hand, the citizen may not be deprived of the opportunity to submit to the proper tribunals specific grievances caused by administrative acts.<sup>28</sup> In their decisions the courts should in the future concentrate on outlining "the correct administrative procedure, rather than obstruct the conduct of administration by voiding concrete measures."<sup>29</sup> In order to insure effective justice, the supreme administrative courts should not be reorganized so as to conform with the leadership principle; "four eyes see more than do two."<sup>30</sup>



The final decision on the future scope of administrative justice has not yet been reached. In the meantime, however, the existing law is still applied, as far as it has remained effective. A few months ago, for instance, the Prussian Supreme Administrative Court paid tribute to the Rechtsstaat doctrine by annulling a decree of a state district authority, by which a newspaper had been suppressed on account of an inaccurate statement published in its columns. The court based its decision on the Prussian police law of 1931; it confirmed the legal rule that newspapers under such circumstances may not be suppressed by a state district authority if the publisher indicates his readiness to issue immediately a proper correction, as he had done in this case.

## NOTES

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3. Müller, *Berufsbeamtentum und Nationalsozialismus*, 4th ed., p. 53, Munich, 1933.
4. Hanns Seel, *Der Beamte im Neuen Staat*, p. 11, Berlin, 1933.
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6. *Ibid.*, pp. 11-12.
7. See Fritz Morstein Marx, *American Political Science Review*, vol. 29, pp. 451 ff., 1935.
8. Herbert Wissmann, *Juristische Wochenschrift*, vol. 64, p. 1914, 1935.
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10. For further references see Fritz Morstein Marx, *American Political Science Review*, vol. 28, pp. 467 ff., 1934.
11. For a brief account see Roger H. Wells, *German Cities*, pp. 3 ff., Princeton, 1932. This book has not lost its indispensable character as a careful analysis of municipal government and administration during the republican period.
12. For further information on the Assembly of German Cities and its three sister organizations see Wells, *op. cit.* pp. 30 ff.; Charles E. Merriam, *Public Management*, vol. 13, pp. 125 ff., 1931; Fritz Morstein Marx, *State Government*, vol. 4, no. 5, pp. 11 ff., 1931.
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19. Reuss, *Juristische Wochenschrift*, vol. 64, p. 2344, 1935.
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24. Reuss, *op. cit.*, p. 2344.
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26. Theodor Maunz, *Deutsches Recht*, vol. 5, p. 479, 1935.
27. *Ibid.*
28. Schneider, *Deutsches Recht*, vol. 5, p. 461, 1935.
29. Maunz, *op. cit.*, p. 481.
30. Schneider, *op. cit.*, p. 461.



## *Chapter V*

### THE MOBILIZATION OF THE NATION

In 1927 a National Socialist master mind submitted to the Leader an economic program. But Hitler refused to consider it. "To endorse an economic program," he said, "would be the most foolish thing I could do. We have such an abundance of economic programs that I certainly have not the slightest reason to proclaim another one." The historian of National Socialism will be grateful to Dr. Robert Ley, head of the German Labor Front, for having disclosed this remarkable bit of evidence on the economic intentions of the Movement.<sup>1</sup> But even without it there could have been no reasonable doubt that the Party as an organization of political, economic, and social protest was without an economic program of its own. In this respect, as in others, National Socialism, in the words of Minister Goebbels, "acted first, and then philosophized." The Twenty-five Points, instead of outlining comprehensively conceived policies, dramatized specific grievances, particularly of the middle class. The Party called itself Socialist and a workers' party; but it had met rebuff after rebuff from organized trade-unionism, and it gained a foothold among the rising generations of labor only under the impact of the economic depression. Moreover, the Twenty-five Points contained anything but a repudiation of private property and private economic initiative.

As soon as the National Revolution had brushed aside the remnants of the republican order, the Leader threw all his energy into taming the revolutionary temper of the Storm Detachment. Early in July, 1933, he summoned the eleven Reichsstatthalter for a short course in applied National Socialism. "More revolutions," he exclaimed, "have succeeded at the first stroke than have been mastered and controlled afterwards. Revolution is not, and must not become, a permanent state of affairs. The released stream of revolution must be guided into the secure bed of evolution. Consequently, a business man should not be



removed if he is a good business man, though not yet a National Socialist, especially if the National Socialist superseding him knows nothing about business. In economic affairs ability alone should be the decisive factor. The task of National Socialism is to insure the development of the nation. One must not look around everywhere to see whether there is something left to revolutionize; it is necessary to advance step by step. We have to think ahead in terms of long periods. Theoretical coordinations provide no worker with bread. History will pronounce its verdict on us in the light not of the number of business men we have displaced or locked up, but of whether we have known how to provide bread. We have today the absolute power to realize our will everywhere. But we must be able to replace inadequate personnel by better personnel. What matters now are not programs and ideas, but the daily bread for sixty-five million people. The national economy is a living organism which cannot be changed at one stroke. Practical experience must not be rejected because of some conflict with a particular idea. Our task is work, work, and again work. The planks of our program do not oblige us to act like fools and upset everything, but to put our ideas into practice ably and cautiously. In the long run the security of our political power will be greater the more we succeed in underpinning it economically."

### 1. STATE SYNDICALISM

The policy of "cautious" adjustment is hardly in itself a convincing proof of any intention on Hitler's part to deliver labor into the hands of the employers. Certainly the middle-class background of the Leader does not predestine him for the role of a "liberator of the enchained." Certainly, too, the "elimination of the class struggle," to which National Socialism is committed, tends of necessity to weaken the bargaining position of the worker, unless specific safeguards are enforced. But it is no less true that a country aspiring to "freedom" has excellent reasons for adjusting the inherited forms of national economy rather than "upsetting everything" and erecting a new structure on the ruins. Nor can it be doubtful that an economy of state-controlled balance is the closest approach to the middle-class ideal of economic organization as well as to the requirements of preparedness. The class-struggle pattern leaves the



middle class at best in the position of the "forgotten man," at worst in that of the chief mourner. In addition, if labor and the forces of industrial control actually can be "forged together," one of the most crucial problems of war economy would have found solution. It is clear that the Third Reich's "legal order must be shaped so as to incorporate the thought of total preparedness into all its parts."<sup>2</sup>

### *The New Balance of Economic Power*

Before the summer of 1933 was over the old trade-unions, dominated by the Social Democratic Party, had been absorbed by the German Labor Front, one of the Affiliated Organizations of the Movement. Soon afterward the existing national employers' associations were dissolved. In January, 1934, the National Labor Act laid the foundation for the future development of labor relations. The act deliberately shifted the center of gravity of labor adjustment from the national stage to the individual economic enterprise, thus counteracting any tendency toward concerted action on the part of employers as well as of workers. In accordance with the leadership principle, the owner of the enterprise was declared plant leader. "He shall promote the welfare of his followers, the employees. The latter shall be loyal to him as fellow members of the working community." The plant leader must avail himself of the advice of a works council. "Each year in March the plant leader is to draw up a list of candidates for the works council in agreement with the chairman of the National Socialist Labor Cells Organization. The followers shall then decide for or against the list by ballot."

The ultimate responsibility for the conditions of employment in each enterprise lies with the plant leader; but if the actual arrangements do not satisfy the followers they may file a remonstrance with the regional labor trustee, a national official accountable to the Reich Minister of Labor. The labor trustees, each of whom is appointed for a larger economic area, are clothed with the power of supervision over all enterprises within their jurisdiction, may quash decisions of the plant leaders on remonstrance by the followers, and may issue general regulations. Layoffs require their approval. Strikes are outlawed.



The act, in addition, sets up local courts of social honor (each composed of a member of the judiciary as chairman, a representative of labor, and one of industry) and a Supreme Court of Social Honor in Berlin. Every member of the working community, including the plant leader, "shall be responsible for the conscientious performance of the duties incumbent upon him." He must "conduct himself in such a manner as to show himself worthy of the respect due his position in the working community. In particular, he shall devote all his energies to the service of the enterprise and strive for the common good, always bearing in mind his responsibility." The honor courts may disqualify plant leaders if they "abuse their authority by maliciously exploiting the workers or offending their followers' sense of honor." On the other hand, members of the works council, for instance, are subject to disciplinary dismissal should they "wittingly interfere unduly in the conduct of the enterprise or continually and maliciously disturb the spirit of cooperation within the working community."

It is clear at the outset that these provisions are so broad that they leave wide scope for the free play of diametrically opposite tendencies. Reviewing the effects of the act in the fall of 1935, Dr. Ley himself conceded, "We know that the National Labor Act came too early. Perhaps it would have been necessary to prepare the ground for it through an extensive educational campaign."<sup>3</sup> That the "spirit of cooperation within the working community" is still widely lacking may be concluded from the "flood of remonstrations"<sup>4</sup> brought forth by plant leaders as well as by works councils. Labor trustees, executive departments, Party agencies, and the Labor Front have been called upon to adjust the never-ending controversies arising in the enforcement of the act. While the workers have been annoyed by such petty devices as the dissolution of bowling and glee clubs as "hostile to the state," employers complain about excessive interference of Labor Front representatives in the affairs of their plants.<sup>5</sup> Dr. Ley recently pointed to "the great danger that the act might be sabotaged so as to cause the worker finally to lose all his confidence in it. For in that case we could not another time present to the German people the idea of employer-employee cooperation, or speak again of labor representation and social honor."<sup>6</sup> But being caught himself in the wheels of



an ideology which blends persuasion with coercion, the head of the Labor Front could think of nothing better than to exclaim, "We must emphatically warn the plant leaders not to look upon labor representation as a mere formality, not to pay wages below the legal level, and never to violate any other provision of the National Labor Act! We National Socialists do not punish instantly, but if we punish, we do so severely and drastically!"<sup>7</sup>

### *Economic "Self-government"*

The insistence on the strict observance of the rights of labor under the act can be traced back to more than a single motive. First of all, in an industrial state such as Germany a balanced economy can obviously not be accomplished or maintained for any length of time at the expense of labor alone. Second, if National Socialism does not succeed in assuring labor of a civic and social status worthy of its essential contribution in the process of production, "freedom" will be reduced to a sheer farce; "total preparedness" on the one hand and passive resistance or moral decomposition on the other represent a self-contradiction. Third, despite the fact that in September, 1933, the cabinet pledged itself to sustain the existing wage and price level, prices have risen and the wage structure has barely been upheld. The importation of raw materials required for rearmament in connection with the precarious state of the German currency has necessitated restrictions in the importation of food-stuffs. At the same time, the government has fixed the prices for domestic agricultural products so as to increase substantially the return to the farmer. Dr. Ley, speaking before the Party Congress in 1935, estimated the general rise in prices for food-stuffs at 13 per cent; others have given higher figures. What this additional burden means to the worker's household needs no explanation. Moreover, while the collective wage agreements of the republican period have not generally been scrapped, inroads have occurred with the result that in certain lines of employment pay envelopes contain less than they did in the spring of 1933. In some branches of business "escalator clauses" have been incorporated into the wage agreements under which the wage is automatically reduced as much as 20 per cent if the monthly income of the individual enterprise drops below a fixed minimum. The Supreme Labor Court upheld such arrangements on the



ground that the government's policy was to keep hard-hit enterprises alive; to this end "employees, too, must bring sacrifices."<sup>8</sup> But the escalator clauses require specific sanction by the trustee of labor. The Court of Social Honor in Brandenburg recently deprived an employer of his right to serve as plant leader of his enterprise because he had persistently violated the existing collective wage agreement.

"We have reached the conclusion that the worker's status in the social order does not at all depend solely on the question of wages, but rather on his place within the people, on the recognition of his social honor." But how is National Socialism going to make the "recognition of social honor" concrete and effective if at the same time labor's economic status appears to be on the decline and the National Labor Act is still admittedly honored as much in the breach as it is in the observance? It will hardly suffice to proclaim, as National Socialism does, that "the employer is the German people."<sup>9</sup> In fact, with the collective inclusion of all employers in the Labor Front the German worker may feel that he is losing rather than gaining political status. Dr. Ley, however, has expressed a different view. "It is of the highest importance," he declared a few months ago, "that the Labor Front embrace all those engaged in production, and not only a part of them. The great danger existed that the Labor Front would grow more Marxist than any organization of the past, and the second and perhaps far greater danger existed that it would become an obsequious instrument of the employers, a 'yellow affair.' With that we would have lost the confidence of the working population for this generation."<sup>10</sup> Yet it is not altogether certain that the "far greater danger" is actually banished.

The Leader's decree of March, 1935, by which the incorporation of the employers into the Labor Front was officially sanctioned, refers to the amalgamation as the crowning measure in the erection of the new economic "self-government." Henceforth plant leaders and employees are to have equal representation in all organs of the Labor Front, national, regional, district, and local. The organs shall promote the mutual understanding of the "justified demands" of labor as well as the "conditions and potentialities" of plant management and thus "create the pre-suppositions of a real national and economic community."<sup>11</sup> The



decree provides, in addition, for the organization of standing committees, each of which is to be composed of an equal number of plant leaders and followers; the membership may not exceed a total of twelve representatives. These committees are charged with the task of "achieving a just social balance." As a rule, the committees shall consider broader problems affecting all economic enterprises. The inspection of individual plants is reserved to special officers of the Labor Front. "Broader problems" are, for instance, wages, working hours, and the question of adequate leaves for employees. Final decisions remain with the trustee of labor, who is entitled to participate in the discussions. The immediate connection between the committees and the trustees of labor is also furthered by a special provision of the decree, under which at least half of the committee membership must be drafted from the trustee's advisory council. In order to coordinate social politics and economic policies, the new National Employers' Chamber serves as the "economic bureau" of the Labor Front. It is noteworthy that the economic bureau is subordinated not to the National Minister of Labor but to the Minister of Commerce, Dr. Schacht.

As the application of the decree will take effect "cautiously and step by step,"<sup>12</sup> it cannot be said with any definiteness how far the Labor Front will succeed in developing into something other than an "obsequious instrument of the employers, a yellow affair." If it fails, however, this very fact will disqualify the Third Reich for "freedom." That National Socialism is apt to overlook the implications would be too cheap an assumption. The appointive system, to which the Labor Front conforms in accordance with the leadership principle, lends itself, of course, to a policy of picking the "obsequious" type of employee representative for office holding or committee service. But never can a "just social balance" be reached without the enlistment of the rank and file of labor. It is here that preparedness will meet its final test.

## 2. THE FARMER'S SHARE

At the first May Day celebration in the Third Reich, in 1933, which featured the slogan "Honor to labor and respect for the worker," the Leader, outlining the "must" program of the cabinet, was mute on wages and prices, but promised an "organic



economy" by first aiding agriculture because "a sound agricultural order will be the basis for a rebirth of German economy in its totality." Indeed, if "blood and soil" meant anything, the farmer was destined to become "the spring of national life." Consequently, in the words of Dr. Ley, "the farmer was relieved, which on the other hand inevitably caused a rise in the living costs of the urban labor masses."

### *Farm Relief*

Instead of resorting to elaborate mechanisms for the indirect manipulation of the agricultural price scale, the cabinet adopted the policy of governmental price fixing. At the end of September, 1933, the Reich Minister of Agriculture was vested with the power to regulate prices so as to allow for an appropriate reward for the farmer's toil within reasonable limitations set by the purchasing power of the average consumer. In the fall of 1935 the producer's return from foodstuffs, according to official figures, had increased as much as 35 per cent;<sup>13</sup> unofficial estimates indicate an even greater rise. It appears, however, that the ensuing burden has not fallen entirely on the consumer. On the one hand, the government has relentlessly, and at least with partial effectiveness, campaigned against speculators; on the other, it was successful in curtailing the profit span of the distributor. In the latter respect it has hardly any further elbow room "lest the trading middle class go to the dogs."<sup>14</sup>

The simultaneous restriction of imports of foodstuffs, largely not a matter of free choice if "the goal is set for us," throws the German people at the mercy of the Reich's soil. For the time being, even good crop years cannot insure full self-sufficiency. The downward slide of German export figures and the negligible gold coverage of the currency do not allow for comfortable adjustments by freely admitting foreign surpluses. In October, 1935, the Regional Party Head for the Rhineland already saw need for the following decree: "The existing temporary shortage in pork and butter frequently affects in particular that part of the population which must perform hard manual work. As National Socialists we wish to profess our solidarity with labor through special measures. Such measures amount to a negligible sacrifice for the individual as compared to the sense of national allegiance displayed by the working population in the Third Reich. I decree



therefore: (1) Effective from today, the households of all civil servants who are Party members, will observe Wednesdays and Fridays as meatless days. All others, citizens as well as civil servants, are urged to follow suit in true National Socialist spirit. (2) The same rule applies to the consumption of butter. (3) All officials and paid employees of the Party and the Integral Formations must, in addition, observe Mondays as meatless and butterless days. (4) This decree will be revoked at some later date. It is hoped that revocation may soon be possible."<sup>15</sup>

Meanwhile, instead of revoking "temporary measures," the government has taken an active part in reviving the wartime system of foodstuff rationing. Prices have further risen on account of genuine scarcity. Far from rejoicing over what amounted to farm relief in high gear, public authorities were forced to put on the brakes. The enforcement of maximal prices, however, was partly counteracted by a prospering bootleg trade which supplies anyone able to pay excessive prices with any quantity of virtually rationed commodities. Step by step the government is "temporarily" submitting to a premature rehearsal of war economy. Soon the farmer may find himself compelled to comply fully with the requirements of a state-regulated agricultural market. It has been announced, for instance, that the government is considering measures against the selling of hogs except in the "open market," for otherwise well-to-do city dwellers might continue to buy directly from the farmer, with the result that the "poorer population" would be severely disadvantaged.<sup>16</sup>

But material farm relief, either by design or by accident, is not National Socialism's sole contribution to strengthening German peasantry as "the blood source of the nation." In the fall of 1933 the Hereditary Farm Act, solemnly promulgated at the National Harvest Day festival, created a new status: that of "hereditary farmer." A "hereditary farm" passes over undivided to one single heir, cannot be sold or mortgaged, and is consequently exempt from foreclosure. Although the currency inflation of the early postwar years lifted the mortgage indebtedness almost completely from German agriculture, at the time of the National Revolution the farmer was again deeply in the red. The Hereditary Farm Act thus operated primarily not as a restriction of the farmer's right to borrow but as an effective protection



against eviction. Large estates were expressly excluded from the application of the act, thus confining the law to about 700,000 farms. The idea of status is elaborated in various provisions of the act. Apart from "Aryan" descent, a "hereditary farmer" must prove himself worthy of the honor of tilling the German soil. Hereditary farm courts established under the act serve as custodians of responsible farm management; they are empowered to disqualify hereditary farmers who by their conduct disgrace their vocation. It has become a favorite pastime among National Socialist jurists to debate the somewhat theoretical question of whether the hereditary farmer is really the owner of his farm. "In view of the existing complete confusion," the demand has been raised "to take as a point of departure a new Socialist concept of property."<sup>17</sup>

In order to free the farmer from the "thralldom of interest," the cabinet has integrated the existing farm-credit agencies and enlisted their services for the purpose of facilitating the conversion and redemption of mortgage indebtedness. But progress along this line has thus far been relatively slow. Even less striking are National Socialism's accomplishments in the field of resettling farmers. One of the reasons is, of course, the limited supply of agricultural acreage. Real headway could be made only through the expropriation of large estates, many of which have been in a deplorable financial state for a considerable time and are spared the fate of public auction primarily because their creditors would encounter heavy losses. The cabinet's reluctance to embark upon a policy of large-scale expropriation and division of the land into hereditary farms is, however, hardly an indication of a back-stage line-up between National Socialism and the Junker class. It rather illustrates the general tendency to "adjust cautiously" instead of tearing down in order to build anew. Moreover, from the point of view of market control the existence of large units of production is anything but undesirable. Finally, here too, "freedom" tames the impulse toward easy-going experimentation. That the Third Reich is a Junker paradise no Junker has had reason to suggest ever since Dr. Hugenberg felt impelled to leave the cabinet. Even before he resigned, the government "cracked down" on the "forces of reaction" by dissolving, for instance, all monarchistic organizations. The people viewed this move with satisfaction rather than with



indignation, for monarchy had lost its sentimental basis in 1918, when the Kaiser crossed the Dutch border. Nothing would be more erroneous than to assume that the wires of contemporary German politics are pulled by any member of the house of Hohenzollern.

### *The Food Estate*

While in the basic industries, such as the coal, steel, textile, and automobile industries, working agreements relating to the volume of production and the adjustment of prices have been quite common for many years, agriculture and food manufacturing generally lacked similar integration. In order to overcome this deficiency, the cabinet organized in the fall of 1933 a Reich Food Estate within which agriculture and all food-manufacturing industries are consolidated. The structure of the Food Estate is strictly hierarchical but allows for a certain amount of professional self-regimentation. The law provides for the setting up of cartels or syndicates, each of which embraces all the enterprises engaged in one sphere of economic activity. The cartel charters require the approval of the National Minister of Agriculture; they are to establish machinery for the effective control of production and distribution. At the end of 1935 most of the food syndicates had received their charters; they include the grain-processing, the potato, the fruit, the milk, and the sugar cartels, as well as such more distant relatives of agriculture as the brewing, the candy, and the fish cartels.

The charters are practically identical in their main provisions. The fish cartel charter, for instance, states in its introductory clause: "It is the aim of the syndicate to stabilize the market in fish, shellfish, and fish or shellfish products, and to regulate to this end the catch, manufacture, and distribution for all enterprises concerned so as to promote their interests, particularly through economically justified prices, and at the same time to satisfy the demand of the consumers. If economic considerations and the purpose of the syndicate in the light of the interests of national economy and the common weal so necessitate, the syndicate is empowered (1) to apportion catch and manufacture among all enterprises concerned according to quantity, kind, and quality; (2) to regulate the distribution, to prescribe specific ways of utilization, to lay down sales conditions, and to raise financial



contributions for the equalization of losses which individual enterprises may suffer through such regulations; (3) to take measures for the promotion of consumption; (4) to close temporarily or definitely such enterprises as are economically superfluous, and to make the expansion of individual enterprises, except for the fish retail trade, dependent upon the approval of the syndicate; (5) to fix prices for fish and fish products with the consent of the Reich Minister of Agriculture; (6) to collect membership dues in order to cover the administrative or other expenditures of the syndicate; (7) to impose fines up to 1,000 *Reichsmark* on such enterprises as fail to comply with the measures of the syndicate."

Whatever the merits of such a far-reaching cartel system may be in times of peace, and whether or not its price-raising tendencies will be effectively checked through government control, it goes without saying that the Food Estate admirably fits the needs of war economy as well as of emergency government. It operates on the premise of a closed economic order. That the consumer may have to pay for it will merely harden him against the impact of the extreme test of "freedom." In the meantime the closed economic order is practiced all the way from food-market regulation to that of agricultural labor. Early in 1935 the cabinet bestowed upon the president of the National Labor Exchange and Unemployment Insurance Organization special powers "in order to satisfy the labor demand of agriculture." To this end he can decree "that workers and employees who were employed in agriculture at a previous time to be specified in the decree, but at the time of the promulgation of the decree are employed in enterprises other than agricultural and engaged in work other than agricultural, must be dismissed by their employers." Another cabinet act passed at the same date required that every worker and employee possess a labor passport, to be issued by the labor exchanges, so that "the adequate distribution of labor in the German national economy be guaranteed."

### 3. THE RICH AND THE POOR

In the memorable campaign preceding the March elections of 1933, the Hitler cabinet had asked for *carte blanche* for four years in order to stamp out unemployment and to rescue the



farmer. Perhaps in no other field has the advance of the Third Reich been more conspicuous than in "making work." Unemployment figures soon began to tumble from their all-time record high of more than six millions and in the summer of 1935 had fallen close to the one-million mark. This remarkable achievement was made possible by what the Leader has justly called a "gigantic" public works program and by the rearmament boom. Supplementary measures, however, contributed to the result. The government, for instance, exempted new automobiles from the automobile tax, which in Germany serves practically the same purposes as the gasoline tax in the United States. As a consequence, while in 1932 the registration of new cars amounted to 41,000, the corresponding figures for 1933 and 1934 were 82,000 and 131,000, respectively.

### *The Art of Borrowing*

The rapid scaling down of unemployment figures and the general stimulation of the national economy as a whole not only had profound psychological effects but also expressed itself immediately in a corresponding decrease of public welfare expenditures. Local authorities in particular rejoiced at this sudden relief. In 1935 the chronically insolvent National Unemployment Insurance Fund began to accumulate reserves instead of petitioning for Reich subsidies. But where did the Third Reich get the money for "making work"?

Theoretically, two avenues are open to the financing of public expenditures. Either the government must raise the necessary amount in taxes or it must resort to borrowing. Practically, however, crisis government everywhere appears to be committed to the latter course when it comes to spending economic depressions out of existence. The Hitler cabinet is no exception to the rule. As early as in the fall of 1933 Count Schwerin-Krosigk, Reich Minister of Finance, disclosed in all frankness that the government pursued a policy of what the *Frankfurter Zeitung* two years later paraphrased as "bold anticipation of future savings."<sup>18</sup> The "boldness" is well illustrated in cabinet acts such as that of March, 1935, which contains the following section: "In the fiscal year of 1935 the provisions of the National Budget Law concerning the extraordinary budget are not to be applied." It is true that a few weeks earlier the cabinet had passed a special Credit



Act. But the whole act consists of this single, somewhat bewildering clause: "The National Minister of Finance is authorized to take up credits the amount of which will be determined by the Leader and Reich Chancellor on recommendation of the Minister of Finance."

The Leader has said, "National Socialism is the clarity."<sup>19</sup> If that is true, then the Third Reich's finances are anything but National Socialist. Clarity exists in only two respects: first, that the national debt has increased in an unprecedented way, and, second, that the largest part of the increase represents short-term obligations transacted through the emission of unfunded bills of credit in lieu of payment in cash. The government has never revealed the actual figures of present-day indebtedness, except for the assurance that the Reich's total obligations "do not exceed tolerable proportions." Private estimates run into fantastically high figures. Suffice it to say that in the realm of national finance most of the commendable principles incorporated in the Local Government Act with respect to the conduct of municipal authorities are deliberately ignored. Some months ago Professor Gaston Jèze, noted French authority on budgetary procedure and a sturdy Liberal besides, expressed his horror over National Socialist financial practices in the columns of a German *émigré* magazine published in Paris; but he conceded between the lines that the general trend toward crisis government throughout the world had practically disposed of the craft of sound budgeting. Indeed, if "the Leader alone knows the direction," the scruples of budget experts are invalidated at the outset.

What has become of the Reich's credit bills? It appears that the largest part have been pumped into the private and public credit system. This transaction was facilitated through the controlling position which the Reichsbank acquired by cabinet act in 1933. As a consequence, for instance, the Reichsbank has developed into "the legitimate administrator of the total asset of foreign currency possessed by the German national economy as a whole."<sup>20</sup> Here, as in other respects, it has proved exceedingly useful that Dr. Schacht, the Reichsbank's resourceful president, serves at the same time as acting Minister of Commerce. Under his final responsibility a National Foreign Currency Administration has been set up. Fulfillment of private obligations involving payment to foreign creditors requires a special permit. Private



assets of foreign currency must be handed over to the Reichsbank in exchange against *Reichsmark*; the Reichsbank in turn allots foreign currency to German importers according to its own discretion. In this way centralized control over imports is easily enforced, although at the price of an inevitable amount of red tape. But a closed economic order cannot do without it, even at the risk that "it becomes growingly difficult to keep pace with our legislation."<sup>21</sup>

As the credit bills are disposed of for the time being in the vaults of private banks, savings banks, home owners' loan banks, agricultural credit banks, the National Unemployment Insurance Fund, and in the safes of private citizens and corporations, which under a new law must invest part of their reserves in government obligations, the actual national short-term indebtedness tends to become virtually long-term indebtedness through the simple fact that the Reich is not able to pay. It could pay only through increasing the volume of paper-money circulation; but what that means Germans know too well from their early postwar experience. The real difficulty lies not in what practically amounts to the Reich's default. It is more important that the captains of industry and banking cannot fail to realize that the artificial boom, though it made the wheels go round, did not result in concrete profits. In a sense it was quite true that "the employer is the people." How under these conditions the 1935 level of employment can be sustained in the future is a puzzling question. Moreover, as the "phalanx of steel" has largely been constructed in the past two years, industry may in the future largely be confined to necessary military replacements. And finally, since production has primarily gone into national defense, the German national economy as a whole has grown poorer to the extent of actual investment in military establishments that are economically unproductive, however indispensable they are in the light of "freedom."

### *"Breaking the Thralldom of Interest"*

The large-scale reemployment program of the Hitler cabinet has not only slashed relief budgets but also caused a corresponding increase in the grand total of wages and salaries. This gain has eased the economic conditions of labor in two ways. First, part-time industrial employment has shrunk; official figures show



that the average monthly wage of industrial workers rose from 98.60 *Reichsmark* in December, 1932, to 118.70 *Reichsmark* in December, 1934<sup>22</sup>—an increase which is quite plausible. Second, the average number of employed members in each household has, of course, also grown, so that the total family budget received a broader basis. It must be kept in mind, however, that these considerations deal with averages; in many individual cases the higher prices are by no means offset through increased income. The fact that the consumption index, except for the demand of Party agencies, has gained but 8 points on a scale of 100 representing the record low of 1932<sup>23</sup> well illustrates the existing situation.

As the Reich itself joined the ranks of the debtor class, the old Party plank condemning the "thralldom of interest" gained new validity. It was not Gottfried Feder but Dr. Schacht to whom the task fell to make freemen out of the slaves of capitalism. He did it neatly and with proper qualifications. In January, 1935, his thoughts on the matter were wrought into a cabinet act for the "reduction of the interest rate." All mortgage banks and similar credit-giving institutions were authorized to "offer" to owners of obligations issued by them a cut to  $4\frac{1}{2}$  per cent in the annual interest, for which the owner was to be compensated through a special payment corresponding to 2 per cent of the face value of the obligation. Under the law, the offer was deemed validly accepted unless the owner rejected it "in writing" and "within ten days"; in the latter case he was also forced to deposit the obligation with the credit-giving institution. In order to make the obvious explicit, the act vested in the Minister of Commerce the power to prescribe by ordinance that obligations whose owners had rejected the offer be adequately marked. All savings accruing from such conversions were to be used for the reduction of the interest rate on mortgages and similar forms of indebtedness, so that, effective from the beginning of October, 1935, the interest burden would be leveled down universally to  $4\frac{1}{2}$  per cent. This was, however, not meant to be merely a present to the debtor. The act declared him obligated to cover a proportionate share of the cost of the interest reduction, particularly of the special payment to obligation owners, but permitted him to pay off this obligation in installments.



At the same time, another cabinet act granted all public bodies the right to extend a similar "offer" to the holders of their bonds. In its appeal to the public the government called upon the citizen's sense of solidarity and patriotism. The response was uplifting. "Within ten days" the return to prewar interest standards became a *fait accompli*. But as a measure of "cautious adjustment" it must have disappointed "temporarily retired" Undersecretary Gottfried Feder. And whatever the actual relief of the debtor class, the reduction of the interest rate neither cheapened short-term money nor created new capital.

#### 4. THE BATTLE AGAINST UNEMPLOYMENT

"Whatever Germany has created and suffered in the two millenniums of her history, all German nights, all German days, all German generations, all wars, destructions, downfalls, all victories, triumphs, and heroes, all geniuses, all thoughts, all manifestations of the German spirit and the German heart, all light and shadow of these twenty centuries in elevations and humiliations—all this, all of it, streams into the National Socialism of Adolf Hitler." If this ecstatic outburst of "Old Guard" sentiment<sup>24</sup> is more than a demonstration of loyalty, it appears to celebrate the Third Reich as the final stage of a long historical evolution at the expense of National Socialism's claim to political originality. Unoriginal indeed was the basic consideration underlying the Hitler cabinet's reemployment program, for even before Dr. Brüning was appointed chancellor, public works had become the republic's economic defense line. But altogether original was the vigor and energy displayed by the new government in carrying the whole nation into the offensive against the economic depression.

#### *Manipulating Mass Psychology*

Strategically the Cabinet of National Concentration found itself in a much better position than had Chancellor Brüning in 1930. There was no lack of indications that the depression had passed its lowest point in the winter of 1932-1933; a determined effort promised to accelerate recovery to such an extent that the national economy might soon become again "self-supporting." Moreover, the effectiveness of resolute action



had just been demonstrated in the uprooting of the republic. The people on either side of the political fence had learned that "a hard will and still harder fists" could accomplish everything. After years of hopelessness the masses were ready for the miracle.

"Our task," the Leader said, "is work, work, and again work." Soon everyone could see the miracle. Month after month unemployment figures dropped. Each time it was front-page news. The Propaganda Ministry had an easy job; facts spoke more dramatically than editorials. The miracle loomed high. Month after month government press releases registered the rise of tax receipts over the previous year, the scope of reemployment in different industries, the savings in public relief appropriations. The miracle lasted. The picture sections of the papers, illustrated magazines, and the news reels in the motion-picture theaters told the story of public works progress. Scores of ambitious projects were launched throughout the country, particularly a nation-wide scheme for the building of first-rate automobile highways, which is partially completed. Large orders from the Reich for the heavy industries followed. In every lane of professional life it could be observed that Germany was on the upward grade. New Deal psychology minimized political cleavages.

But in 1935 the pace of advance has slowed down, although unemployment is not yet "wiped out." In July there were still 327 "emergency districts" left—larger urban communities so hard hit that citizens living outside or in other parts of the country are officially warned not to move there, lest they be placed on less than the regular relief rate in case of destitution. The magnificent port of Hamburg is among these "emergency districts." Three years after Hitler's rise to power Germany's national economy is facing the danger of stagnation. And stagnation could easily turn into relapse. The miracle is dimming.

### *A Crucial Question*

A conspicuous relapse might have disastrous consequences. Retreat puts every army under terrific nervous strain. And the columns of the Third Reich are thus far still in formation. Genuine national cohesion under the swastika has not yet been achieved. "We shall need a long time," the head of the Labor



Front admitted a few months ago, "before we have reached the ideal to some extent."<sup>25</sup>

Early in November, 1935, Geheimrat Peter Klöckner, president of the well-known Klöckner Iron Works, expressed his regrets at the annual meeting of stockholders that all he could offer them was an increase of dividends from  $2\frac{1}{2}$  per cent to 3 per cent. Explaining the dividend policy of the works he cautioned the stockholders not to lose sight of economic necessities. "It is without question," he said, "that sooner or later a slack in the present volume of production must be expected. The National Railway Administration has already restricted its current orders; it intends to pursue this course for some time to come. The large construction projects which have greatly stimulated employment, have come to a close; it is doubtful whether further projects will be initiated next spring. The barometer of domestic employment therefore indicates at least uncertain weather. Special efforts must be made to counteract the imminent decline through increasing exports."<sup>26</sup>

This suggestion, however, raises a crucial question. Even granted that international trade, since 1931 reduced closer and closer to the indispensable minimum, will reexpand in 1936, it yet remains to be seen how far the economics of "freedom," particularly with respect to the German foodstuff market, will fit the purpose of export stimulation. Exports presuppose imports, and thus may interfere with the subtle mechanism of a closed economic order. Moreover, greater dependence on exports would make the Third Reich vulnerable to organized political antagonism abroad such as boycott movements. "More revolutions have succeeded at the first stroke than have been mastered and controlled afterwards."

#### NOTES

1. Robert Ley, *Deutsches Recht*, vol. 5, p. 431, 1935. For a survey of the Third Reich's economic legislation see Franz Schlegelberger, *Das Wirtschaftsrecht des Dritten Reiches*, Berlin, 1935; *Jahrbuch für Nationalsozialistische Wirtschaft*, Stuttgart and Berlin, 1935. See also Kurt Hanefeld, *Geschichte des deutschen Nährstandes*, Leipzig, 1935; Heinrich Stoll, *Deutsches Bauernrecht*, Tübingen, 1935.
2. Heinrich Rosenberger, *Deutsches Recht*, vol. 5, p. 295, 1935.
3. Ley, *op. cit.*, p. 430. The standard work on the National Labor Act is: Hans Karl Nipperdey and Rolf Dietz, *Gesetz zur Ordnung der Nationalen Arbeit*, Munich and Berlin, 1934.



4. *Frankfurter Zeitung, Wochenblatt*, no. 36, Sept. 8, 1935.
5. *Ibid.*
6. Ley, *op. cit.*, p. 430.
7. Ley, *op. cit.*, p. 432.
8. *Juristische Wochenschrift*, vol. 64, p. 2224, 1935.
9. Ley, *op. cit.*, p. 431.
10. *Ibid.*
11. Krohn, *Deutsche Juristen-Zeitung*, vol. 40, p. 524, 1935.
12. *Ibid.*, p. 526.
13. Thus Dr. Ley, *Frankfurter Zeitung*, nos. 471-472, Sept. 15, 1935.
14. *Ibid.*
15. *Frankfurter Zeitung*, nos. 549-550, Oct. 27, 1935.
16. *Ibid.*
17. Roger Diener, *Deutsches Recht*, vol. 5, p. 465, 1935.
18. *Frankfurter Zeitung, Wochenblatt*, no. 36, Sept. 8, 1935.
19. Ley, *op. cit.* in note 1, p. 430.
20. Hans Hartenstein, *Devisennotrecht*, p. 7, Berlin, 1935.
21. L., *Juristische Wochenschrift*, vol. 64, p. 2615, 1935.
22. Thus Dr. Ley, *loc. cit.* in note 13.
23. *Ibid.*
24. Hans Frank, *Deutsches Recht*, vol. 5, p. 426, 1935.
25. Ley, *op. cit.* in note 1, p. 430.
26. *Frankfurter Zeitung*, nos. 562-563, Nov. 3, 1935.



## CONCLUSION

"Germany has found the modern form of the twentieth century, and has developed it in all fields." Alfred Rosenberg, who thus saluted the National Socialist Party Congress in 1935,<sup>1</sup> was perhaps conscious of the fact that, whatever the "modern form of the twentieth century" may be, there is a fundamental difference between form and substance. Certainly he had excellent reasons for being silent on the substance of the Third Reich, on the degree of genuine political cohesion among its citizens, on the measure of true spiritual homogeneity. It was much safer merely to refer to the form of political organization. Despite the doubts of the Führerstaat doctrine as to the "final shape" of the "state of national community," two characteristics of the new Germany stand out as having promise of duration. In the first place, the "National Resurgence" fulfilled a historical mission, for which the stage had been set since 1918, by creating and integrating, in terms of administrative adjustment, the German unitary state. Secondly, in paving the road to German "freedom," the Third Reich broke up the "Versailles system"; by conforming to the standards of a "defense community," it forced new rules on postwar European diplomacy.

### *The Stimulus of Emergency*

"The Prussian has taught his neighbors how to make sand produce cereals by enriching it with artificial manures; and he has taught us how to raise a whole population to an unprecedented standard of social efficiency by a system of compulsory state education and to an unprecedented standard of social security by a similar system of health and industrial-accident insurance. In these responses to his physical environment, the Prussian has performed a greater service to Mankind and has established a more lasting memorial for himself than in his more notorious achievements: the training of the Prussian army and the building of the German Reich." It is a British historian who in this way evaluates the accomplishments of "the Prus-



sian."<sup>2</sup> In line with his main thesis one may say that both the German unitary state and the pattern of "defense community" in their present form are the outgrowth of the German people's acute realization of national insecurity.

The effort that has gone into governmental consolidation and the adaptation of the whole social order to preparedness, military and economic, can be estimated even if one confines oneself to a casual glance at the Reich's statute book. In 1932 it numbered less than 900 pages, in 1933 more than 2,200, and in 1934 almost 2,700 pages; 1935 produced a tome equal in size to that of the previous year. It is noteworthy that the bulk of this legislative material, whether statutes or ordinances, deals with economic and social policies. If the premises of a closed economic order are taken for granted, the necessary technical transformations, from the organizational and administrative angle, could hardly be more effective. In this whole field, however, the Party's contribution is nil; for all practical purposes the economics of "freedom" are left to men like Dr. Schacht and the ministerial civil servants, who are as ideologically unorthodox as they are experienced in their domain. Since "the task is set for us," their work is, of course, anything but enviable. Groaned Dr. Schacht at the close of 1935: "We are operating not under the primacy of politics, but under the coercion of politics."

About the same time, Prime Minister Göring was dispatched to Hamburg, since 1933 an "emergency district," in order to "radiate ideological energies" among the dock workers. "The situation," he said, "is not bad, the situation is not sad—the situation is heroic!" And Dr. Ley, out on a similar expedition, more fully informed his labor audience of what a "heroic situation" is by stating: "Germany resembles today a besieged fortress."<sup>3</sup> But it appears that the Third Reich is besieged only by its own shadow. For the head of the Labor Front added bluntly that, owing to the economic consequences of rearmament, the financial resources of the country do not admit of importation of foodstuffs such as would be necessary in order to alleviate the existing scarcity; whatever funds are available must be used for importing raw materials without which factories would be forced to close down. "What is your own choice," he asked, "fat or work?"



*The Sham of Compliance*

The choice between fat and work would probably not represent a serious problem, were it not for the fact that the prospects for maintaining the present level of employment in the future are quite uncertain. At the threshold of 1936 the people are awaking to a full recognition of the complexities of the Third Reich's economic status. The resulting general uneasiness has brought to the fore again the weak ideological foundations on which the German one-party state rests. The very impact of National Socialist propaganda, the stifling of civic initiative except under the banners of the approved faith, the impatience displayed by the Movement in converting the nation to its creed, and the insistence on the empty ritual of compliance have on the whole tended to perpetuate the spiritual cleavage between the Party and the people. "Popular enlightenment" has kept the nation in a trance rather than clarified the implications of the government's political course. On the other hand, since 1933 the Party has not grown more homogeneous than it was before the National Revolution. "Here is a joke I heard yesterday," Herr Nachbar confides to his pal. "Why do they always treat each other gently at Party headquarters? Because everyone has folders of secret material against all the others."

Addressing the Reichstag in March, 1933, Hitler exclaimed: "Certainly, he who loves Germany may criticize us."<sup>4</sup> Few Germans outside the Party loved their country sufficiently to be permitted to criticize the "select order of leadership." The consequence has been well stated by Minister Dr. Frank who once said: "If a government shuts itself off from objective criticism—criticism which is not hostile to the state—it will fall prey to decomposition."<sup>5</sup> Identification of the electorate with the aims of its government presupposes either a real possibility of choice on the part of the electorate or a real meeting of the public mind on the part of the government. So far the Party has not lived up to Hindenburg's expectations as expressed in his "political testament" made public after his death: "My Chancellor Adolf Hitler and his Movement have made a decisive step of historical significance toward the great goal of restoring the domestic unity of the German people beyond all differences of class and profession. I know that much remains still to be done, and I



heartily wish that the act of national resurgence and consolidation be followed by the act of reconciliation embracing the whole German Fatherland."<sup>6</sup>

### *The Coming Test of Strength*

In the fall of 1935 Lord Lothian, in a speech before a Liberal audience in England, professed his conviction that Italy had a much better case against the League and Great Britain than she had against Ethiopia. He further elaborated this point by saying that so far the League, in confining itself to the preservation of an inflexible *status quo*, had failed to take into consideration the fundamental causes of political conflict in a dynamic world. In his opinion the League would lose more and more ground if it continued to disregard the need for constructive revision in order to ease the political and economic pressure that industrialization has caused in certain countries. Without such constructive revision the League would virtually place a premium on self-help, or precipitate explosions that could easily set the world afire. The German government is not unaware of the fact that Lord Lothian's views are more widely shared in England by "men who count" than is perhaps generally presumed. If Italy's Ethiopian venture ends successfully, as it probably will—in a four-power treaty signed by Great Britain, France, Italy, and Ethiopia—the Third Reich may deem the situation ripe for presenting its "must" program of foreign policy.

It is barely conceivable that this program will contain demands for territorial adjustments in Central Europe, except perhaps with regard to Memel. It is also fairly safe to assume that Austria will not be mentioned; the Third Reich has learned that this issue cannot be settled except with Italy's consent. But it is highly probable that the German demands will include the return of at least some of Germany's former colonies. As late as November, 1935, the Leader told a representative of the United Press that the Reich "will never give up its colonial claims."<sup>7</sup> To what extent Germany, without generous foreign credits, could actually develop colonies so as to make them self-liquidating and productive investments, is somewhat problematical. A much more vital question is whether she can recapture an adequate share of her prewar foreign trade without



losing her breath in the ruthless competition that in recent years has sprung up in her former market strongholds abroad. But whatever the Third Reich will care to propose, it will find attentive consideration in Great Britain, profoundly impressed by "freedom" as she is. It is therefore of paramount importance to Germany that she prove herself capable of mastering her domestic situation in the face of brewing danger. Any serious setback at home could not fail to affect adversely her bargaining strength in international dealings. The near future will decide how she is meeting this critical test. Behind the solid-looking front of the one-party state there is anxiety and fear. *Post equitem sedet atra cura.*

## NOTES

1. Alfred Rosenberg, *Deutsches Recht*, vol. 5, p. 429, 1935.
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3. *Frankfurter Zeitung*, nos. 626-627, Dec. 8, 1935.
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5. *Mitteilungsblatt des Bundes National-Sozialistischer Deutscher Juristen und des Reichsrechtsamts des NSDAP*, no. 2, p. 40, 1935.
6. *Frankfurter Zeitung, Sonntagsausgabe*, no. 33, Aug. 19, 1934.
7. *Hamburger Nachrichten*, Nov. 28, 1935 (evening edition).

















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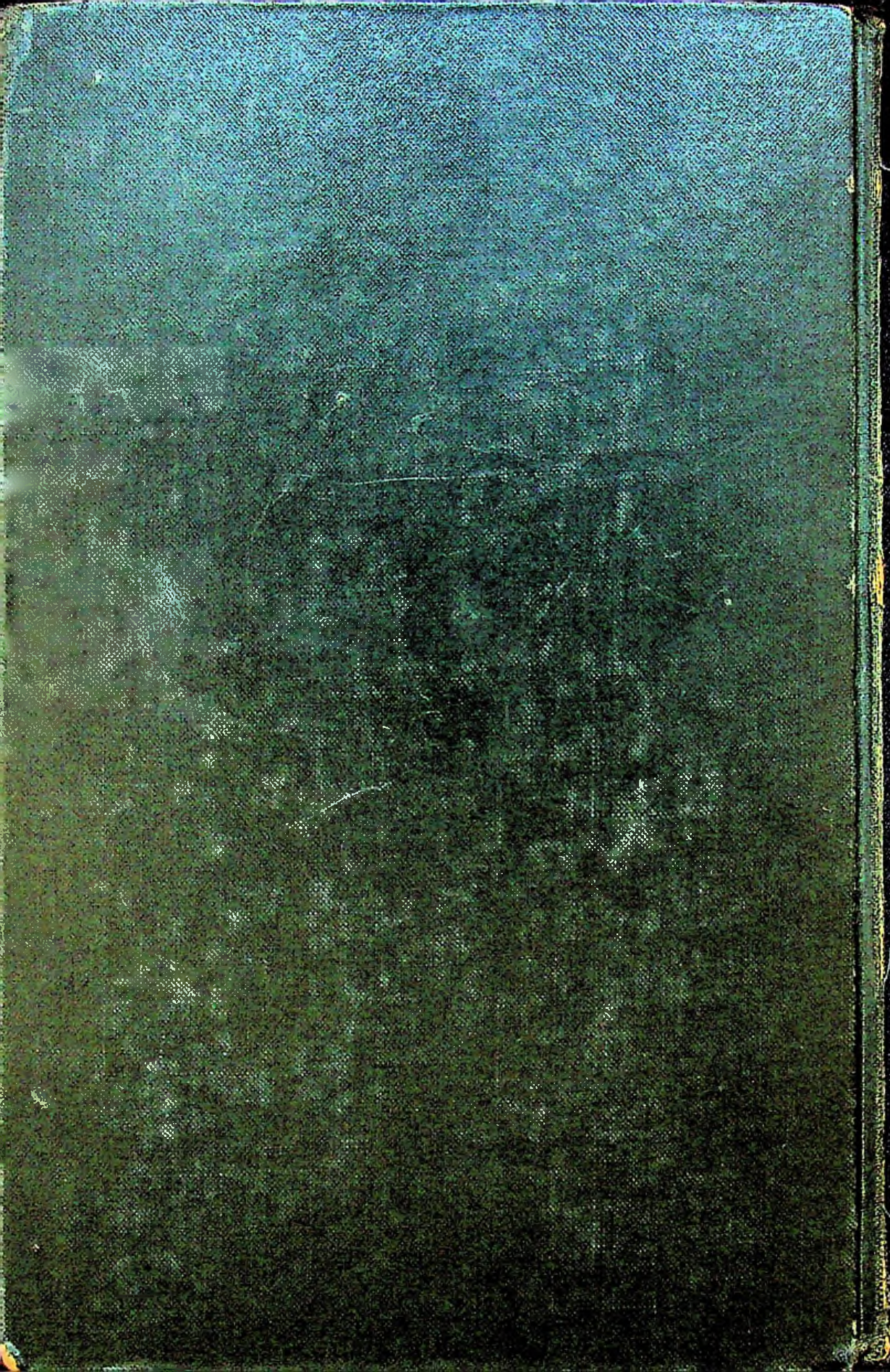




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